

**MINUTES OF THE REGULAR MEETING OF DIRECTORS
OF THE WATER WORKS BOARD OF THE CITY OF BIRMINGHAM
February 22, 2018**

The regular meeting of the directors of The Water Works Board of the City of Birmingham was held on Thursday, February 22, 2018 at 9:00 a.m., at 3600 First Avenue North, Birmingham, Alabama.

The following Directors were present: Tommy Joe Alexander, Deborah Clark, William “Butch” Burbage, Jr., Ronald A. Mims, Brett A. King, Sherry W. Lewis, George Munchus and William R. Muhammad. Director Brenda J. Dickerson was absent.

Inasmuch as eight Directors were present, a quorum was in attendance.

The meeting was also attended by: Mac Underwood, General Manager; Darryl Jones, Assistant General Manager of Operations and Technical Services; Tammy Wilson, Executive Assistant to Assistant General Managers, Sonny Jones and Darryl Jones; Grace Amison, Executive Assistant to the Board of Directors; Michael Griffin, George Anderson, Barry Williams, Rosalind Jones, Terrell Jones and Chris Hill, Board Employees; K. Mark Parnell and Mary Thompson, Parnell Thompson, LLC; Kelvin Howard; Jesse Lewis and Dorian Kendrick, Agency 54; Theo Johnson, Volkert & Associates, Inc.; Brian Ruggs and Patrick Flannelly, ARCADIS; Isaac Ballard and Nelda Thompkins, Birmingham Water Works Board retirees; Chandra Abesingha, C E & Associates, Inc.; Olivia Martin, Attorney General’s Office; Ken Delap, Lake Purdy-Host Recreation; Juanita Jones, Securities Capital Corporation; Hank Black, Birmingham Watch; Bob Freeman, Barbara Phillips, Hassan Elliott, Frances Pope, Janice Bledsoe, Jon Posch and Allie Jones, citizens.

Chairman, Tommy Joe Alexander called the meeting to order at 9:00 a.m. and welcomed the meeting body. General Manager, Mac Underwood called on Information Technology Manager, George Anderson to open the meeting with prayer.

Following, was a request for the Board to adopt a resolution commending the employees of the month for February 2018, as set forth in agenda item 1. GM Underwood stated Staff recommended approval of the item. Human Resources Manager, Paul Lloyd said the company’s Go365 Program was launched last year as a way for employees to get healthier. The group being recognized today led a kick-off event in January. The group has embraced this endeavor on their own and they are making a positive impact Mr. Lloyd stated. The GO365 Team introduced themselves and gave their years of service. GM Underwood mentioned the Walkathon that employees are participating in to get healthier and reduce the company’s healthcare costs as well. Chairman Alexander congratulated the team, checks were distributed and a photograph was taken. 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. Ronald A. Mims, that the Board hereby recognizes and commends Kristie Curtis, Meridith Hollins, Nancy Lambert, Tilden Leigh, and Audra Taylor as the Finance and Administration Division’s Employees of the Month;

Rick Jackson and Dana Richardson as the Executive Department’s Employees of the Month; and Jaquice Boyd and Jermaine Stewart as the Engineering and Maintenance Division’s Employees of the Month for February 2018, for promoting the Go365 kick-off event to encourage employees to live a healthier lifestyle. Go365 is a wellness and rewards program for healthy behaviors. The team assisted 150 participants, 107 were new signees and 43 were returning participants. Their exceptional and professional teamwork made the event a success;

BE IT FURTHER RESOLVED, that a copy of this resolution be spread upon the minutes of the Water Works Board of the City of Birmingham and a copy presented to the employees named above.

Resolution No. 7713 is hereby adopted by unanimous vote.”

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Next, was a request for the Board to approve payments of invoices, as set forth in agenda items 2.1 through 2.3. GM Underwood indicated Staff had reviewed the invoices and recommends them for payment. 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. Ronald A. Mims, that the Board hereby authorizes staff to execute payments to the following:

- 2.1 Carl Dalton NeSmith, Jr., LLC
Retainer fee for February 2018 \$ 500.00
- 2.2 Dominick Feld Hyde, P.C.
Professional services - BWB Pension Plan
January 18 - 22, 2018 \$ 1,252.80
- 2.3 The Jones Group, LLC
Professional services rendered for February 2018 \$ 7,500.00

Resolution No. 7714 is hereby adopted by unanimous vote.”

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Following, the Board was asked to approve the Revised Jefferson County Sewer Collection Agreement, which is a five-year agreement effective June 1, 2018, as set forth in agenda item 3. GM Underwood stated this item was discussed in the last Board Meeting adding the only thing that had changed was the effective date, which had been changed to June 1, 2018 to allow for a 90-day implementation period. On a motion duly made and seconded, the following resolution was adopted by a roll call vote:

“BE IT RESOLVED By The Water Works Board of the City of Birmingham (“the Board”), on a motion duly made by Ms. Sherry W. Lewis and seconded by Ms. Deborah Clark,

that the Board hereby approves the Revised Jefferson County Sewer Collection Agreement which is a five (5) year agreement effective June 1, 2018.

Resolution No. 7715 was hereby adopted by a roll call vote as follows:

Alexander, Aye; Burbage, Aye; King, Aye; Muhammad, No; Munchus, No; Mims, No; Clark, Aye; Lewis, Aye.”

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Next, was a request for the Board to award a bid to NVINT, the lowest responsible and responsive bidder for providing a Software-as-a-Service solution which encompasses features to back-up, transmit and store system and application data to a remote location for added security and automated retrieval of information, at an estimated three-year out-of-pocket cost to the Board of \$144,900.00, as set forth in agenda item 4. 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 “Butch” Burbage, Jr. and seconded by Ms. Deborah Clark, that the Board hereby authorizes staff to award bid to NVINT, the lowest responsible and responsive bidder for providing a Software-as-a-Service (cloud-based) solution which encompasses features to backup (copy), transmit, and store system and application data to a remote location for added security and automated retrieval of information, at an estimated three-year out-of-the-pocket cost to the Board of \$144,900.00. [NOTE: The Historically Underutilized Business (HUB)’s subcontractor participation is 0% (Direct Supplier).] IT Manager, George Anderson stated this is a service that would allow BWWB to back-up its data and be stored at an off-site location. Currently IT stores the data on-site though Iron Mountain.

Resolution No. 7716 is hereby adopted by Directors Alexander, Burbage, King, Muhammad, Mims, Clark and Lewis; Director Munchus Abstained.”

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Following, GM Underwood read agenda items 5 and 6, which was a request for the Board to adopt a resolution to rescind Resolution No. 7312 requiring management to rotate on-call contractors between three contractors and to continue following Resolution No. 7115 awarding bids to three separate contractors with work being awarded to the lowest responsible and responsive bidder in accordance with the original bid specifications; and a request for the Board to approve revised on-call contractor bid specifications to award contracts to the two lowest responsible and responsive bidders. [NOTE: Second low bidder will have the option to meet the low bidder’s price. If they do, work assignment will be rotated.] A handout, BWWB On-Call Contractors Bid Summary (a copy is on file with the Board meeting book) was distributed. GM Underwood gave a summary of what has happened with the on-call contractor bid.

GM Underwood further explained that at the December 21, 2015 Board Meeting the Board tabled the on-call contractor bid which would have awarded three separate contractors to provide on-call water utility repair services. There were two concerns raised by Board members at that Board meeting; whether REV Construction could be responsive being headquartered in Tuscaloosa and whether miscellaneous fees had been factored into the bids. GM Underwood stated Staff looked at MapQuest regarding the distance from Tuscaloosa to Birmingham and determined from

that standpoint the original bid award should stand. GM Underwood stated Staff met with the Board and its legal team at the time, which was Fuston, Petway & French, LLP; and the Board and its legal team determined based on the proximity of REV Construction along with the HUB participation numbers and the minimal difference in the bid amount that bidder number four, Rast Construction should be awarded third lowest responsive bidder. A revised bid evaluation was prepared as recommended by the Board's attorneys. Based on the revised bid evaluation REV Construction was then rejected. At the January 27, 2016 Board Meeting the on-call contractor bid was approved awarding the work to Jones Utility & Contracting, Startley General Contracting and Rast Construction. In October of 2016 the Board then approved to rotate these three contractors. When the revised bid evaluation was done factoring in the miscellaneous charges, Jones Utility & Contracting, Rast Construction, REV Construction and Tate Construction came up in that order. GM Underwood presented an email from Assistant General Manager Sonny Jones to Distribution managers and supervisors instructing them not to rotate the contractors any longer. Screen shots were taken and emails and texts were sent to the actual contractors notifying them of the change. GM Underwood stated what is on the agenda today is what Staff recommends doing to clear up the on-call contractor award bid, as set forth in agenda items 5 and 6.

Chairman Alexander announced he just had a meeting with Olivia Martin from the Attorney General's Office and she asked us to straighten out the on-call contractor bid award because the Board has awarded bids to someone who is not the lowest bidder and that is against the Alabama State Bid Law. Director Muhammad asked if Ms. Martin was a judge. Chairman Alexander responded that this is what Ms. Martin does every day and she is an attorney. Chairman Alexander asked Attorney Parnell to read the letter from Ms. Martin dated February 21, 2018, which asks for a detailed analysis of the on-call contract rotation among the various contractors. The Alabama State Bid Law states that expenditures are to be awarded to the lowest responsible bidder. The letter warns that failure to comply with the Alabama State Bid Law is a Class C Felony. Further, the bid law cannot be avoided by simply passing a Board resolution. Rotation between three contractors and three different rates does not even appear to meet the minimum requirements of the State Bid Law according to Ms. Martin's letter. It appears that the Board has insisted that Senior Staff engage in this rotation process since 2016 and justification of this needs to be provided in the analysis and response to the State Attorney's Office. Ratepayers must be protected from the Board's decisions which unnecessarily raise costs for running the system. Ms. Martin stated in her letter that the Board has a fiduciary responsibility to protect the ratepayers and not the contractors. Director Alexander asked Ms. Martin, who was present in the meeting to make a statement. Director Muhammad asked if Ms. Martin could address the Jefferson County Sewer contract. Chairman Alexander responded that issue was not under discussion. Ms. Martin said the Alabama State Bid Law is very clear stating her letter addresses what she believes is happening at the Birmingham Water Works Board (BWVB). Director Lewis stated she was concerned as the lowest bidder, that they would lose business if a second bidder is given any of the work. Ms. Martin responded that she had not researched that portion of the issue. Director Muhammad asked Ms. Martin of the 600 water companies in the state, how many meetings she oversees. Ms. Martin stated all of them are overseen, however; they do not attend every meeting of each entity.

Director Munchus asked that item 5 be separated into part A and part B. Director Munchus stated he also had an item under new business that would help clear this item up. GM Underwood gave a summary of what has happened with the on-call contractor bid relative to Resolution No. 7115, awarding the bids to the three (3) lowest responsible bidders. He pointed out that the rotation

of work conflicts with said resolution, stating that Resolution No. 7312 (to rotate the bids) cannot remain in effect along with Resolution No. 7115. Director Munchus indicated that he was supporting Resolution 7115 and indicated that he could not support rescinding Resolution 7312. Director Muhammad indicated that he was confused regarding the two resolutions and he asked whether the Board had adopted a resolution awarding the on-call bids to the lowest responsible bidders. The General Manager pointed out the initial on-call bids regarding Resolution No. 7115 was adopted January 27, 2016 wherein the bids went to the first low bidder, the second low bidder and the third low bidder, pointing out that Staff operated with said resolution until October 2016. Director Muhammad stated that Board Attorney Parnell indicated that when the resolution was adopted in October 2016 it nullified the previous resolution. The General Manager distributed Resolution No.7115 to the directors and Director Clark read said resolution, outlining the award of bids to the three on-call contract bidders (the original bids). Director Muhammad stated that said resolution does not indicate that the bid would go to the low bidder and the General Manager stated also it does not reference that the bid is to be rotated. Director Muhammad stated that the bid specifications state that the Board's Staff would assign the work. The General Manager stated that Staff is trying to clear up the on-call bid and he indicated the only way to clear it up is to rebid said contracts with the revised bid specifications. Director Munchus commented that he did not have any problems with the bid specifications relative to the Resolution No. 7312 adopted in October 2016. Director Munchus asked as it relates to item 6, why Staff is changing the bid specifications and he commented if Staff would adhere to said specifications, it would work. Further, Director Munchus indicated that he does not understand how they can determine the low-cost provider and include estimates on miscellaneous charges. He stated in his opinion the miscellaneous charges would have to be factored into the bid cost. He pointed out in the new proposed bid in item 6, it has been removed which it is a mistake and the traffic control items have been removed. Director Munchus stated these items, from a business and public safety standpoint are very, very important. Director Munchus indicated that he was going to ask that the Board substitute this item (the current resolution that the Board is operating under) for the proposed new bid specifications because the new bid specifications are not as comprehensive as the current ones. The General Manager pointed that traffic control is included in the revised bid specifications and that miscellaneous charges are not included in said specifications indicating any additional charges incurred would be marked up by 10 percent. Some additional discussions ensued relating to inclusion of the different type of charges in the revised bid specifications.

Following, Director Muhammad referenced the resolution adopted by the Board at the February 8, 2018 Board Meeting to bring in an independent attorney to review the on-call process and he stated today's proposed situation is designed to get around said resolution. Subsequently, Director Muhammad made a motion that items 5 and 6 be tabled until the attorney referenced in the resolution adopted February 8, 2018 makes his report to the Board and Director Munchus seconded the motion. Following, Director King asked Director Lewis why she voted against Resolution No. 7115. In response, Director Lewis commented that she believed the lowest bidder for the on-call contract should be awarded the work and she explained how it was originally done by the Board. She stated that the Board originally awarded the on-call contract work to the low bidder and if the low bidder could not do the work, then the Board went to the next low bidder and if that bidder could not do the work, the Board went to the next low bidder. She pointed out at that time all the work was going to the lowest bidder for the on-call contract work and indicated that the same low bidder received all the work unless the lowest bidder contractor could not do the work. Director Lewis commented that the new on-call bid was being rotated from the lowest

bidder to a higher bidder; Director Lewis stated that she did not agree to take a company out of the bid because of the distance it had to travel to do the work. Director Lewis called to the Director's attention that the first people on site to assess the work are BWWB employees and pointed out sometimes the work is completed by said employees. Further, she called to the Board's attention that there is a process before an on-call contractor is called. In addition, Director Lewis pointed out the company that is costing the Board the least amount of money should be awarded the bid. Also, Director Lewis commented at that time Chairman Robinson and she were trying to decrease the cost for the on-call work, pointing out the other companies could get the on-call work provided and they could do quality work at a low cost. Director Muhammad stated that his motion was based on the fact that there are some questions about miscellaneous charges not being included which has been admitted to by Staff and indicated in Staff's report it was stated that miscellaneous charges are estimated. Director Muhammad asked why the miscellaneous charges were estimated when Staff has the invoices, commenting that certain Board members have received and reviewed the invoices. Director Muhammad inquired how the invoices were provided to the Board and then Staff comes back and says they are estimated miscellaneous costs. Director Muhammad stated in his opinion the Board should not vote on these items until the independent attorney has reviewed the process of how the emergency on-call situation has been handled. Director Muhammad commented that the dog and pony show today is designed to get around said resolution and stated he was sick and tired of the Board being hijacked and taken advantage of. The General Manager pointed out the original bid evaluation referenced estimated costs and quantities as it is referenced on all bid evaluations. Director Muhammad asked the General Manager why he would estimate the charges when it is not a new contract. Director Muhammad stated he has some concerns about why miscellaneous charges were not used when it was a part of the bid specifications. He mentioned the low-cost bidder is not mentioned in the bid specifications; it states the Board's Staff would assign the work. Further, he stated if the Board voted to rotate to the work, then the Board is giving direction to Staff on a policy. Chairman Alexander stated the Board cannot direct Staff to break the law. Director Muhammad asked Chairman Alexander how he knows the law has been violated. Chairman Alexander responded that the Attorney General Office has stated that the Board is in violation of the law. Director Muhammad stated the Attorney General Office is a lawyer that has an opinion and he indicated that a judge determines what the law is. Director Munchus pointed out that the miscellaneous charges have to be included when the bid is awarded. Director Munchus stated he would argue that the low-cost provider was not the low-cost provider relative to bid awarded in October 2016. The General Manager stated that the Attorney General Office has asked Staff to pull every invoice and calculate every bill relative to the on-call contracts from October 2016 to present. He indicated that Staff would provide the information to the Attorney General Office and the Board. Following, Director Muhammad amended the motion that the Board table anything dealing with the on-call contracts until the Attorney General office completes its investigation on said contracts and Director Munchus seconded the motion.

Subsequently, Director Clark asked for clarity relative to the on-call contracts. She asked at this point if the Board is asking to table everything relative to on-call contracts until after the requested information has been provided and reviewed by the Attorney General Office and they respond to the Board on their findings. Director Clark asked a series of questions pointing out the Board does not know the timeline of the Attorney General Office review and she asked what is the Board going to do with the work of the Water Works Board that has to continue. She stated it is her understanding if the contracts are rotated in accordance with the current bid specifications where the bid went to the lowest bidder, the next highest and the next highest, commenting that

part is not legal because the Board is supposed to go with the lowest responsible bidder. She stated the Board needs to quantify the amount of work the Board is actually talking about. She asked whether it means the Board has enough work where if one contractor cannot do it, and the Board needs to give the work to another contractor so it can be addressed in a timely manner. She asked if the Board is going to get the contractor who is going to do the work to agree to do it if the Board goes to number one so that the Board can get the work completed because the work of the Water Works Board has to continue? She asked if the Board is going to go to the lowest bidder and then when the Board has more work because the Board is waiting on the Attorney General Office ruling? Director Clark asked if the Board going to get the second contractor to agree to the lowest price so that the Board will be within the law? She asked whether the Board is going to get three contractors to agree to that one price so that the Board can be within the law? Director Clark stated that she would need to have an answer to all of her questions before she can vote because it is not clear to her. GM Underwood stated the original bid specifications stated the work would go to the lowest bidder and awarding it to the lowest responsible bidder means all the work would be given to the lowest bidder; and if the lowest bidder cannot perform the work, the work is awarded to the second lowest bidder wherein the price cannot be changed.

The General Manager stated the original bid specifications do not allow or provide or include anything that says bidder number two can go to the lowest bidder twice. He pointed out that it is included in the revised bid specifications and indicated it was not included in the current specifications wherein the price could not be changed at this time. The General Manager stated relative to all of the questions; he suggested to the Board to rebid the on-call contracts and indicated it would clear it up based on the revised bid specifications. Some discussion ensued relative to clearing up the on-call contracts and eliminating the on-call procedures. Director Lewis pointed out the reasons the Board used some of the on-call contractors was because they have the heavy equipment that the Board did not have. Director Clark stated for the sake of the Board having work ongoing while the Board is looking at on-call. Director Clark inquired whether the Board is saying at this time that it is going to rebid and it would go to the lowest bidder and then the Board would ask the other contractors to match the low bidder's price for the sake of continuing with the work? Director Clark stated it is obvious from the current discussion that the on-call process needs to be looked into beyond today's discussion. Director Clark pointed out that the Board has to be responsible and make sure while it is conducting an extensive probe into the on-call bids that the Board keeps the work ongoing so that it does not get behind and she indicated the Board needs said probe.

The General Manager stated in the new bid specifications, the work would go to the lowest responsible bidder and that the second low bidder would have an option wherein if they meet the first low bidder's price, then the Board can rotate the bid. This is the option in the revised bid specifications. Director Lewis expressed her concerns relative to the option to rotate the on-call bid based on the second low bidder matching the low bidder's price. The General Manager explained how the bid specifications were drafted in two ways which included the option to rotate relative to the second low bidder. Director Clark stated that going to the next lowest bidder relative to rotation is not an option wherein the Board would be in violation of the law. Board Attorney Thompson stated if the first lowest bidder is not available, then going to second low bidder would be going to the lowest bidder. Director Clark asked a series of questions relative to the distribution of the on-call work to the lowest responsible bidder. The General Manager stated that 90% of the work can be done by the lowest bidder, and he stated when there is an ice storm and other

situations, another contractor would need to be available to do the work. Director Clark stated that it was stated that emergency on-call happens during the winter months when it is cold; she indicated that is not true. At 10:04 a.m. Director Lewis departed the meeting. The General Manager pointed out the revised bid specifications state critical and routine repairs. At 10:05 a.m. Director Lewis returned to the meeting. Director Clark asked Staff to bring all the facts to the Board so that they can be addressed at that time. The General Manager stated all comments discussed today have been included in the revised bid specifications. The General Manager informed the Board in order to clear up the on-call contract, Staff recommends it to be rebid with the revised bid specifications.

Following, Director Muhammad commented that the Board voted to have the on-call bids investigated and stated he would prefer the on-call contract bids be investigated by the independent attorney. Director Muhammad stated he does not know how independent the Attorney General Office is because they look to be a part of Parnell Thompson, LLC. Chairman Alexander stated there had been enough discussion on the issue. Director King stated the Board has heard from the Attorney General Office today stating what the Board is currently doing with the on-call contracts wherein it is not in compliance with the law. Director King stated he is against tabling anything and stated the Board needs to approve item 5. Director King stated that there has been meaningful discussion on item 6 and commented if the Board finds out later that one of the contractors has misrepresented the numbers then he indicated that the Board could address such when the new bid is awarded. He asked that the Board become in compliance with the law. After discussion, the General Manager stated a motion had been made to table items 5 and 6. Subsequently, a roll call vote was taken; Directors Alexander, Clark, Burbage, Lewis and King voted against the motion; and Directors Muhammad, Munchus and Mims voted for the motion. The motion to table items 5 and 6 failed 5 to 3.

Next, Chairman Alexander called for a motion to approve item 5. On a motion duly made and seconded, Director Muhammad asked why did the Board need to rescind the resolution when the contract has expired. Subsequently, a roll call vote was taken and the motion passed 5 to 3. 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. Brett A. King and seconded by Mr. William “Butch” Burbage, Jr., that the Board hereby rescinds Resolution No. 7312 requiring management to rotate on-call contractors between three (3) contractors and to continue following Resolution No. 7115 awarding bids to three (3) separate contractors with work being awarded to the lowest responsible and responsive bidder in accordance with the original bid specifications.

Resolution No. 7717 is hereby adopted by a roll call vote as follows:

Alexander, Aye; Burbage, Aye; King, Aye; Muhammad, No; Munchus, No; Mims, No; Clark, Aye; Lewis, Aye.”

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Next, Director Munchus made a motion to table item 6 and Director Muhammad seconded the motion. Director King commented that he would like the Board attorneys to discuss this item

with the Attorney General Office to confirm the proposed bid specification is in compliance with the law. Director Muhammad pointed out that the Board has voted to bring in an independent attorney to review the on-call bids. Director King stated he thought tabling item 6 would be appropriate, because there seems to be a gray area relative to the low bidder regarding the option in the revised bid specifications to match the low bidder's price. Some discussion ensued on clarity relative to the option on how the new on-call contracts would be awarded. Following, Attorney Parnell indicated there seems to be some debate among the Directors as to whether they want to have the option to rotate. Attorney Parnell stated if the majority of the Board does not want to rotate, the Board does not have to delay anything to ask for an opinion. He indicated if the Board wants to award it to one bidder and if that is what the majority of the board wants to do, then we can change the bid specifications so that it is crystal clear that it is in compliance with the bid law. He stated it is the attorney's opinion that the Board can do it in the way that is in the bid specifications and it can be discussed with the Attorney General Office. He stated if it is bid, it would be crystal clear that there would be one bidder.

Following, Director Lewis asked the General Manager prior to the rotation of on-call contractors, how the work was previously awarded. GM Underwood stated management decided who got the work and he indicated the work was awarded to the low bidder most of the time. The General Manager stated prior to the rotation, there were no complaints as to how the work was assigned because most of the work went to the low bidder of the on-call contractors. He pointed out the contractors are aware of their capabilities, indicating a certain case where a special tool or equipment was needed, the work was assigned to the second contractor and/or the third contractor. The General Manager indicated he would prefer the Distribution Department assign the work because they know what contractor have the capability to complete the work. The General Manager stated with the current on-call rotation, it indicated that the management's role was taken away. Director Lewis stated when the rotation first began, it was always the Board's intention to get it at the lowest and best price; Director Lewis pointed out the way the on-call rotation changed, price did not matter and indicated that is where she had the problem. Director Lewis stated she is for the low bidder and indicated in her opinion when another bidder is added, it changes the bid process. Directors King and Director Clark inquired what the Board is putting in place right now so that the work can continue before the Board receives the opinions from the Attorney General Office and the independent attorney. Director Clark stated that the issue is the gray area relative to the low bidder wherein it has to be addressed. Director Clark stated that work has to continue and she indicated something has to be put in place so that the Board can work within the guidelines of the law and clear up everything with actual numbers. The General Manager pointed out that item 5 takes the Board back to the lowest bidder to receive the on-call work based on the current documents. Attorney Parnell pointed out to the Board if they are going to table item 6 and the Attorney General Office remains a part of it, the Board would have to put on the records exactly what their questions are. He stated if the Board does not want to rotate the on-call bidders, it would be simple to get one bidder. Following, Director King made a motion to enter into Executive Session to discuss potential litigation and Director Munchus seconded the motion. Director Munchus stated while the Board is in Executive Session, there is another matter that needs to be discussed involving the good name and character of the potential of a new firm coming in, pointing out he only wanted the Board members to present during that discussion. Attorney Parnell certified the purpose of the Executive Session, stating the purpose of said meeting is to discuss threatening

and pending litigation. He indicated the meeting would last approximately 15 minutes. On a motion duly made and seconded, the following resolution was adopted:

“BE IT RESOLVED By The Water Works Board of the City of Birmingham (“the Board”), on a motion duly made by Ms. Sherry W. Lewis and seconded by Ms. Deborah Clark, that the Board hereby approves an Executive Session to discuss threatening and pending litigation.

Resolution No. 7718 is hereby adopted by unanimous vote.

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At 10:30 a.m., the Board entered into an Executive Session. At 10:46 a.m., the meeting reopened and a motion and second were made to adjourn the Executive Session.

Following, Director Muhammad made a motion to table item 6 until after the independent investigation relative to the revised on-call contractor bid specifications and the motion was seconded by Director Munchus. A roll call vote was called: Directors Alexander, Clark, Burbage, Lewis and King voted against the motion; and Directors Muhammad, Munchus and Mims voted for the motion. The motion to table item 6 failed by 5 to 3.

Next, Director Lewis made a motion to approve item 6 subject to the following changes; that the Board delete that the second low bidder would have the option to meet the low bidder’s price; that the Board continues to assign work to the lowest bidder and if the lowest bidder is not available, then the work will be assigned to the second lowest bidder and the motion was seconded by Director Burbage. Subsequently, Chairman Alexander called for a roll call vote: Directors Alexander, Clark, Burbage, Lewis, Mims and King voted for the motion; and Directors Muhammad and Munchus voted against the motion. The motion to approve item 6 passed by 6 to 2. On a motion duly made and seconded, the following resolution was adopted:

“BE IT RESOLVED By The Water Works Board of the City of Birmingham (“the Board”), on a motion duly made by Ms. Sherry W. Lewis and seconded by Mr. William “Butch” Burbage, Jr., that the Board hereby approves revised on-call contractor bid specifications to award contracts to the two (2) lowest responsible and responsive bidders, with the following revised note. [NOTE: the work is to be assigned to the lowest bidder first; and if lowest bidder is not available, the work will be assigned to the second lowest bidder.]

Resolution No. 7719 is hereby adopted by a roll call vote as follows:

Alexander, Aye; Burbage, Aye; King, Aye; Muhammad No; Munchus, No; Mims, Aye; Clark, Aye; Lewis, Aye.”

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Following, under new business Director Munchus called to the directors’ attention that at the February 8, 2018 Regular Board of Directors’ Meeting, the Board authorized Chairman Alexander and First Vice Chair Clark to recommend legal counsel relative to some bid law issues.

Director Munchus recognized Chairman Alexander and Vice Chair Clark to hear their recommendation. Chairman Alexander reported that he had met with the Mrs. Olivia Martin of the Attorney General Office and she indicated that the Water Works Board was in violation of the bid law relative to the on-call bids. Chairman Alexander indicated that First Vice Chair Clark has recommended a law firm and they have talked with the Attorney General Office relative to the recommendation. Director Munchus recognized Director Clark and she reported that they met with the Attorney General Office and they provided, in her opinion, some really good information. Following, Director Clark distributed a draft Engagement Letter from Attorney A. Joseph of Maynard Cooper relative to the resolution adopted February 8, 2018, to retain outside legal counsel regarding some bid law issues. Director Clark pointed out the Board has two options relative to said matter. Chairman Alexander indicated that he is satisfied with the Attorney General Office opinions. Director King commented that Attorney Joseph is an excellent attorney and asked the Board to consider the cost for his services. The Board discussed placing a cap for Attorney Joseph's services and they agreed to cap his services at \$15,000.00. After discussion, a motion was duly made and seconded and a roll call vote was taken: Directors Clark, Burbage, King, Lewis, Munchus, Muhammad voted for the motion; Director Alexander voted against the motion; and Director Mims abstained. The motion passed by vote of 6 to 2. 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. Brett A. King and seconded by Ms. Sherry W. Lewis, that the Board hereby authorizes Chairman Alexander and First Vice Chairwoman Clark to accept an Engagement Letter from Anthony A. Joseph at Maynard Cooper at an amount not to exceed \$15,000.00.

Resolution No. 7720 is hereby adopted by a roll call vote as follows:

Alexander, No; Burbage, Aye; King, Aye; Muhammad, Aye; Munchus, Aye; Mims, Abstain; Clark, Aye; Lewis, Aye.”

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Next, the public was recognized to speak. Mr. Bob Freeman reminded the meeting body that there is a lawsuit with the U. S. Supreme Court challenging the expansion of the BWWB. Mr. Freeman stated he was not addressing Mr. King, Mr. Burbage or Mr. Alexander today, adding Ms. Lewis' record will speak for itself because she was on the original Board. Mr. Freeman addressed Ms. Clark urging her to ask questions. Mr. Freeman stated he met Ms. Barbara Phillips, a citizen today and he did not understand how the Board could rush by item 3 and allow the County to take ratepayers money. If you don't collect the money then you go into further debt Mr. Freeman reminded the Board. Mr. Freeman addressed Ms. Clark again and urged her to ask more and more questions. Mr. Freeman stated the County did not deserve to be bailed out.

Following, GM Underwood provided a handout (a copy of which is on file with the Board meeting book) on minority participation and stated that AGM Michael Johnson sent an email regarding this. For fiscal year 2017 the HUB participation was 26.86% and based on the 30% goal, that would be 89.5% GM Underwood stated. There is also a detailed list of all the minority

vendors and they are broken down by ethnicity. GM Underwood stated there was some discussion in the last Board meeting regarding who can speak at Regular Board meetings. A handout (a copy of which is on file with the Board meeting book) was provided on the By Laws of the BWWB. GM Underwood read Section 8; the General Manager shall prepare the Board agenda and items may be suggested by Board Members, administrative Staff, the public and employees.

Next, Director Munchus urged a member of the public to speak if she would like to do so. Ms. Barbara Phillips addressed the meeting body stating she was a citizen of the College Hills neighborhood and she was born in Birmingham, AL. Ms. Phillips stated she felt enslaved by her water service company. Ms. Phillips stated she was retired and she needed to let something go to keep her service on. Ms. Phillips asked why she was getting so many bills each month. Ms. Phillips said she was billed twice in one month for water service and twice in one month for sewer charges. Chairman Alexander stated there was someone onsite today from the Call Center to address her concerns. Director Munchus asked that Ms. Phillips be allowed to continue to speak. Ms. Phillips stated she did not understand the tiers of billing which were explained to her. Director Muhammad asked Ms. Phillips if she was over the age of 55. Ms. Phillips responded yes. Director Muhammad suggested the H2O Foundation could possibly help. Director Mims recommended Staff check for leaks as well.

Following, Director Muhammad thanked Mr. Freeman for speaking and suggested he also talk with Ms. Martin from the Attorney General Office today about the Jefferson County Sewer issue.

As there was no further business before the Board, the meeting was adjourned at 11:08 a.m.

/s/
Tommy Joe Alexander
Chairman/President

Attest:

/s/
William "Butch" Burbage, Jr.
Secretary-Treasurer