

**MINUTES OF THE REGULAR MEETING OF DIRECTORS
OF THE WATER WORKS BOARD OF THE CITY OF BIRMINGHAM
July 10, 2015**

The regular meeting of the directors of The Water Works Board of the City of Birmingham was held on Friday, July 10, 2015 at 9:30 a.m., at 3600 First Avenue North, Birmingham, Alabama.

The following Directors were present: Ronald A. Mims, Kevin B. McKie, Ann D. Florie, George Munchus, and Sherry W. Lewis.

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

The meeting was also attended by: Michael Johnson, Assistant General Manager of Finance and Administration; Darryl Jones, Assistant General Manager of Operations and Technical Services; Sonny Jones, Assistant General Manager of Engineering and Maintenance; Tammy Wilson, Administrative Assistant to Assistant General Managers, Sonny Jones and Darryl Jones; Grace Amison, Executive Assistant to the Board of Directors; Rick Jackson, Ben Sorrell, Cary Prather, George Anderson, Barry Williams, Luther Austin and Iris Fisher, Board Employees; Kelvin Howard, Mark Parnell, Mary Thompson, J. J. Johnson and Charlie Waldrep, Waldrep, Stewart & Kendrick, LLC; Dan Meadows, S.S. Nesbitt & Company, Inc.; Jesse Lewis and Dorian Kendrick, The Lewis Group; Kirk Mills, Volkert & Associates, Inc.; Jerry Jones, ARCADIS; David Merrida, Birmingham Construction Industry Authority; Rebecca DePalma, Lobbyist with White Arnold and Dowd, P. C.; Johnathan Austin and Marcus Lundy, Jr., Birmingham City Councilors; Madison Underwood, Staff Writer for The Birmingham News; Ann C. Smith, League of Women Voters; Ike Gulas, Ike Gulas Law Firm. Mac Underwood, General Manager, was available by teleconference.

Assistant General Manager, Darryl Jones, called the meeting to order at 9:35 a.m. in the General Manager's absence, and welcomed the meeting body. Sonny Jones, Assistant General Manager, opened the meeting with prayer.

Director Lewis welcomed newly appointed Board member, Ronald A. Mims.

Under old business, Director Munchus stated an election was in order to select a new Chairman and that he would like to nominate Ronald A. Mims to fill the position of Chairman of the Board of Directors. On a motion duly made and seconded, the following resolution was adopted:

“BE IT RESOLVED By The Water Works Board of the City of Birmingham (“the Board”), on a motion duly made by Mr. George Munchus and seconded by Mr. Kevin B. McKie, that the following is hereby elected to serve as Chairman of the Board of Directors of The Water Works and Board of the City of Birmingham as indicated below for one year or until the next election of officers:

■ Ronald A. Mims Chairman/President

2.3	<u>Volkert, Inc.</u> For professional services rendered for June 2015	\$ <u>3,630.00</u>
2.4	<u>White Arnold and Dowd, P.C.</u> For professional services rendered for June 2015	\$ <u>5,000.00</u>
2.5	<u>Terminus Municipal Advisors, LLC</u> For professional services rendered for June 2015	\$ <u>6,500.00</u>
2.6	<u>Adams and Reese, LLP</u> For professional services rendered for July 2015	\$ <u>7,500.00</u>
2.7	<u>The Bloom Group</u> For professional services rendered for July 2015	\$ <u>10,000.00</u>
2.8	<u>Fine Geddie & Associates, LLC</u> For professional services rendered for July 2015	\$ <u>10,000.00</u>
2.9	<u>The Lewis Group</u> For professional services rendered for June 2015	\$ <u>25,000.00</u>

Resolution No. 6945 is hereby adopted by unanimous vote.”

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Following, Darryl Jones asked the Board to award bids, as set forth in agenda item 3. Darryl Jones indicated management has reviewed the referenced bid awards and recommends them for approval. Darryl Jones stated items 3.1 and 3.2 are annual amounts and will only be used up to that amount and not to exceed that amount. Item 3.3, the Collegeville area project, will allow emergency traffic to proceed during train stoppage and is at 100% reimbursement according to Darryl Jones. Director Munchus asked if G & C Supply and Consolidated Pipe were local companies. Director McKie responded that Consolidated Pipe was local and G & C Supply was out of Tennessee. Director Munchus commended Sonny Jones, Staff and David Merrida for their work on item 3.3 with Global Construction & Engineering as they are a 100% Historically Underutilized Business (H.U.B.). Sonny Jones responded that they are a prime bidder. Director Lewis asked for an explanation of what corporation stops are, referring to item 3.2. Darryl Jones responded that a corporation is a device that is drilled and connected to the water main directly. It is a standard fitting for all 1” and 2” services. On a motion duly made and seconded, the following resolution was adopted:

“BE IT RESOLVED By The Water Works Board of the City of Birmingham (“the Board”), on a motion duly made by Mr. George Munchus and seconded by Mrs. Ann D. Florie, that the Board hereby authorizes staff to award bids on the following:

- 3.1 G & C Supply, the lowest responsible and responsive bidder, for full circle repair

clamps (annual) to replenish inventory in the Warehouse, at an estimated out-of-pocket cost to the Board of \$76,412.98.

3.2 Consolidated Pipe, the lowest responsible and responsive bidder, for corporation stops (annual) to replenish inventory in the Warehouse, at an estimated out-of-pocket cost to the Board of \$95,310.00.

3.3 Global Construction & Engineering, Inc., the lowest responsible and responsive bidder, for the relocation of Water Board facilities in conflict with ALDOT/City of Birmingham Project No. STPBH-STPAA-7376(600), F.L. Shuttlesworth Drive Vehicular/Pedestrian Bridge between 29th Avenue North and 33rd Avenue North. This project includes the installation of 2,680’ of 8” DICL pipe; 560’ of 4” DICL pipe and related appurtenances; and 22 water services, this being at a bid amount of \$531,000.00; plus estimated cost of materials and Water Board labor in the amount of \$331,625.40; less ALDOT reimbursement totaling \$862,625.40 for an out-of-pocket cost to the Board of \$0.00.

Resolution No. 6946 is hereby adopted by unanimous vote.”

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Following, Darryl Jones asked the Board to authorize Crown Castle to sublease a portion of their lease area to Southern Linc at the Dolly Ridge tank site located at 3224 Woodhaven Drive at no cost to the Board, as set forth in agenda item 4. This sublease request is allowable per paragraph 27 of the lease agreement and poses no hazard or interference to the Board’s operations of the tank. Director Munchus asked if there would be anything actually on top of the Birmingham Water Works Board’s (BWWB) tank. Darryl Jones responded nothing would be on the tank, just the ground beneath. Chairman Mims asked why portions of the original lease were blacked out. Director McKie stated he had the same question. Attorney Mark Parnell stated the information blacked out is proprietary information. However, it was important to provide the lease in order to see that the sub lease does not interfere with the prime lease. On a motion duly made and seconded, the following resolution was adopted:

“BE IT RESOLVED By the Water Works Board of the City of Birmingham (“the Board”), on a motion duly made by Mr. George Munchus and seconded by Mrs. Ann D. Florie, that the Board hereby authorizes Crown Castle to sublease a portion of their lease area to Southern Linc at the Dolly Ridge tank site located at 3224 Woodhaven Drive at no cost to the Board. [NOTE: This sublease request is allowable per paragraph 27 of the lease agreement and poses no hazard or interference to the Board’s operations of the tank.] Resolution No. 6947 is hereby adopted by unanimous vote.”

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Next, Darryl Jones asked the Board to exercise their right of first refusal on structure of Lot No. 15 at Inland Lake and to require Staff and/or the Board’s attorneys to attend property closing in order to execute a new recreational site agreement, as set forth in agenda item 5.

Darryl Jones stated that from time to time we have had these leases come up for purchase at Inland Lake and it is Staff's recommendation not to purchase this lease. 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. Kevin B. McKie, that the Board hereby declines the right of first refusal on structure of Lot No. 15 at Inland Lake and to require Staff and/or the Board's attorneys to attend property closing in order to execute new recreational site agreement on said property. Resolution No. 6948 is hereby adopted by unanimous vote.”

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Following, Darryl Jones asked the Board to approve expenditures with The Foxboro Company, a sole source provider, to purchase hardware, software and services for the SCADA Control Processors (CP 60s) and I/O Modules Upgrade Project at an out-of-pocket cost to the Board of \$900,000.00, as set forth in agenda item 6. This expenditure is exempt from bidding under the Alabama Competitive Bid Law because it is a sole source provider. Staff has provided additional information to the Board following its introduction last month regarding discounts because of the current agreement we have with Foxboro. Additionally, discounts will be given on the service agreement in years two and three Darryl Jones stated. Director Florie asked if this item was budgeted. Darryl Jones responded yes. Director McKie asked if the contract had been extended as the valid date of June 30, 2015 had passed. Darryl Jones stated the contract was extended. 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. George Munchus, that the Board hereby approves expenditures with The Foxboro Company, a sole source provider, to purchase hardware, software and services for the SCADA Control Processors (CP 60s) and I/O Modules Upgrade Project at an out-of-pocket cost to the Board of \$900,000.00. [NOTE: This expenditure is exempt from bidding under the Alabama Competitive Bid Law because it is a sole source provider.] Resolution No. 6949 is hereby adopted by unanimous vote.”

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Next, Darryl Jones stated there was not any other official business before the Board and he turned the meeting over to Chairman Mims adding the attorneys had asked for an Executive Session. Chairman Mims welcomed the Birmingham City Council Representatives which were present, President Johnathan Austin and Chair of the Economic Development Committee Marcus Lundy, Jr. President Johnathan Austin stated the City Council is concerned with how we all move forward as a city. And their most important concern is what we are doing as elected officials for the citizens of Birmingham and in the case of BWWB, the ratepayers. President Austin stated they were here in support of the Birmingham Water Works Board, its employees and most importantly the ratepayers. President Austin stated he is looking forward to seeing all

the wonderful work Chairman Mims and the Board will be doing on behalf of the citizens of Birmingham.

Following, Darryl Jones stated he failed to mention that the General Manager, Mac Underwood was on vacation and would be returning Monday. Chairman Mims stated he would like to meet with the Purchasing Department to discuss the Minority Vendor Program (as it was formerly called) further and find out the percentages we are at. Darryl Jones stated Staff would schedule a meeting and pull that information together for the Board.

Next, Darryl Jones interjected that Staff had scheduled a meeting next Thursday, July 17, 2015 on “How to do Business with the Birmingham Water Works” in our Training Room on the ground floor. Board attorney Mark Parnell asked the Board, Staff and guest, attorney Ike Gulas to enter into an Executive Session. Attorney Parnell indicated the business should take about 15 minutes to discuss pending litigation which may lead to action if the Board so desires. On a motion duly made and seconded, the following resolution was adopted:

“BE IT RESOLVED By The Water Works Board of the City of Birmingham (“the Board”), on a motion duly made by Mr. George Munchus and seconded by Mrs. Ann D. Florie, that the Board hereby approves an Executive Session to discuss pending litigation which may lead to action. Resolution No. 6951 is hereby adopted by unanimous vote.”

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At 9:58 a.m. the Board Directors, Assistant General Managers and the Board’s attorneys entered into an Executive Session.

At 10:17 a.m. a motion was made and seconded to reopen the meeting.

Following, attorney Charlie Waldrep asked the Board to adopt a resolution relating to the BP Corporation North America Inc. Settlement.

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”), Alabama, as follows:

Section 1. Findings. The Board has found and ascertained and does hereby declare as follows:

- (a) that it does hereby approve the terms and conditions of that certain Full and Final Release, Settlement, and Covenant Not to Sue, by and between the Board and BP p.l.c., BP Corporation North America Inc., BP Exploration and Production, Inc, and any of their parents, subsidiaries, affiliates, successors, assigns, officers, directors, employees, agents and representatives (“BP Entities”), which is incorporated herein by reference as if

copied herein in full and attached hereto as Exhibit "A" ("Release") granting, *inter alia*, to the Board a payment from BP Exploration and Production, Inc. in the amount of **ONE HUNDRED SIX THOUSAND ONE HUNDRED NINETEEN AND NO/100 (\$106,119.00) DOLLARS** less an attorney's fee to the Gulas Law Firm of fifteen (15%) percent; and, an amount to cover the out of pocket expenses of the Gulas Law firm incurred on behalf of the Board in an amount not to exceed \$1,000.00 ("Fees and Expenses"), for and in consideration of the agreement of the Board and the BP Entities to the terms and conditions contained in the Release;

(b) it is therefore necessary and desirable, and in the best interest of the Board and its ratepayers, for the Board to enter into the Release herein described and to pay the Fees and Expenses in order to effectuate the purposes of this Resolution.

Section 2. Authorization of Release. The Board does hereby authorize and direct the Chairman/President, Ronald A. Mims, to execute and deliver, for and in the name and behalf of the Board, the Release between the Board and the BP Entities and to pay the Fees and Expenses. The Release shall be in substantially the form presented to the meeting of the Board at which this Resolution is adopted (which form shall be preserved in the permanent records of the Board pertaining to the said meeting and which is hereby adopted in all respects as if the same were set out in full herein).

Section 3. General Authorization. The Chairman/President is hereby authorized and directed to execute, deliver, seal and attest such other agreements, undertakings, documents and certificates and to take such other actions on behalf of the Board as may be necessary to consummate the terms and conditions of the Release, pay the Fees and Expenses and to carry out fully the transactions contemplated by this Resolution.

Section 16. Severability. The provisions of this Resolution are hereby declared to be severable. In the event any court of competent jurisdiction should hold any provision hereof to be invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Resolution.

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Mr. George Munchus moved that the foregoing resolution be adopted, which motion was seconded by Mrs. Ann D. Florie, and, upon the same being put to vote, the following vote was recorded:

<u>Directors:</u>	<u>YEA:</u>	<u>ABSTAINED</u>
Ronald A. Mims	X	
Sherry W. Lewis	X	
Ann D. Florie	X	
George Munchus	X	
Kevin B. McKie		X

The Board Chairman thereupon announced that the motion for adoption of said Resolution had been carried.

Resolution No. 6950 is hereby adopted by Directors Mims, Lewis, Florie, Munchus; and Director McKie abstained from voting.”

As there was no further business before the Board, a motion was duly made and seconded, and the meeting was adjourned at 10:20 a.m.

_____/s/
Ronald A. Mims
Chairman/President

Attest:

_____/s/
George Munchus
Secretary-Treasurer