

MINUTES OF THE REGULAR BI-MONTHLY MEETING OF DIRECTORS  
OF THE WATER WORKS BOARD OF THE CITY OF BIRMINGHAM  
FEBRUARY 9, 2017

The regular bi-monthly meeting of the directors of The Water Works Board of the City of Birmingham was held on Thursday, February 9, 2017, at 9:00 a.m., at 3600 First Avenue North, Birmingham, Alabama.

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

The meeting was also attended by: Mac Underwood, General Manager; Michael Johnson, and T. M. "Sonny" Jones (Darryl R. Jones was absent), Assistant General Managers; Grace E. Amison, Executive Assistant to the Board of Directors; George Anderson, Board Employee; K. Mark Parnell and Mary H. Thompson, Parnell Thompson, LLC; G. Courtney French, Fuston, Petway & French, LLC; Brian T. Ruggs and Jerry Jones, ARCADIS US, Inc.; Theo Johnson, Volkert, Inc.; Dr. Jesse J. Lewis, Sr., Dorian Kendrick, Max Rykov, and Daniel Rumley, Agency 54; David Head, Utegration; David Merrida, Jr., Birmingham Construction Industry Authority; John Archibald, The Birmingham News; Matt Shelby, Shelby Company; Melissa Preston, Preston CPA; E. Philemon Hill, Legacy Sports; Avee Shabazz, RBG; John Ray, KHAFRA; Valton Johnson, JMG; Eddie Perry, Perry Hauling; Kent Hartzog, GS&P; Gregory Jones, The Jones Group; Richard Jones and Brad Stevens, Jones Utility & Contracting Company, Inc.; Perry Dawson and Alan Collins, WBRC – FOX 6; Eric Bailey, WBMA; Othell Phillips and Virginia Doyle, Jefferson County Commission; Sarah Killian, WVTM – 13; Amos Hollinhead, WIAT – 42; Yvonne Davis, Yvonne Green-Davis, P.C.; Iva Williams, III, Richard Dickerson, Jimmie Hill, Jimmie Warren, Willa Madden, Felicia Boykin, Anthony Lathan, Jr., Frances Pope, Janice Bledsoe Fisher, Joyce Lee, LeDarius Hilliard, Carlton Henderson, Carlos Chaverest, Nelda B. Thompkins, Helen Mitchell, Melvin Stringer, Johnny Gunn, B. J. Brown, Marilyn Mosley, Mary Davis, Darryl Jones, Iris Davis, LaKandria Rush, James E. Collier, Oliver Harper, and Deborah Peacock, visitors.

As there was a quorum, the meeting was called to order at 9:02 a.m. After a disruption, Chairwoman Lewis cautioned the meeting body that today's gathering is organized and anyone causing outbursts would be escorted out. Following, Assistant General Manager Michael Johnson opened the meeting with prayer. The General Manager asked persons interested in speaking to complete the Speakers Registration form and turn it in immediately, pointing out they would be allowed to speak at the end of today's meeting. Following, outbursts continued and Chairwoman Lewis asked security to take the appropriate steps to restore order. She said the Board had a business meeting to conduct and reminded the meeting body that persons wanting to speak would be allowed to do so after Board business. Director Muhammad asked that the rules be suspended to allow persons to speak prior to the Board conducting its business wherein Chairwoman Lewis said the Board would follow its agenda. Following, Chairwoman again asked security to accompany disruptive persons from the meeting.

Next, the General Manager proceeded with the agenda and he asked the Board to approve a resolution terminating Fuston, Petway & French, LLP's agreement, as set forth in agenda item 1. After the motion was made and seconded, another outburst occurred and Chairwoman Lewis asked security to escort persons from the meeting if they continued to be disruptive. When someone said the meeting is public, Chairwoman Lewis agreed and again reminded the audience that a time had been set aside for the public to speak wherein no disruptions would be allowed because the directors were trying to address the

issues. Following, disruptions continued to occur from the meeting body and Chairwoman Lewis repeatedly asked security to do what was necessary to restore order.

Next, Director Munchus asked the General Manager who placed items 1; 7.1 and 7.2 on the agenda. The General Manager stated Chairwoman Lewis and he added the agenda items wherein Chairwoman Lewis said an email was sent to the directors relative to the referenced items. Attorney French distributed a letter from the Alabama State Bar dated February 3, 2017 to the directors wherein a copy is on file in the meeting book. Following, Director Dickerson inquired of the rationale for termination of Fuston, Petway & French, LLP's contract. Chairwoman Lewis said there had been questions concerning said contract that Attorney French was not agreeable to wherein Director Dickerson asked her to explain. Following, Chairwoman Lewis said one (1) of the concerns is the \$2 million in said law firm's agreement to administer a Contract Compliance Program that would allow said attorney to hire people. She said she took issue with this when Attorney French initially presented his contract, pointing out she thinks the Board should administer said program. Chairwoman Lewis also said the referenced agreement commits the Board for three (3) years, pointing out she asked said attorney to revise his contract during a meeting and he refused. Chairwoman Lewis said other Board members have had situations with Attorney French on billing and other issues.

Following, Director Dickerson asked if Attorney French could speak to his contract. Chairwoman Lewis replied not now and pointed out a motion and a second had been made and indicated she would like to hear from all of the directors. Following, Director Dickerson asked if it is possible the Board might be sued if it moves to terminate the referenced contract wherein Chairwoman Lewis said it is a possibility anytime a contract is terminated.

Subsequently, Director Muhammad commented that the former Board approved \$2 million for a Contract Compliance Program and voted said program would be administered by Fuston, Petway & French and ARCADIS, pointing out nothing has been said about the latter company. Director Muhammad said he believes whatever the former Board voted on is legal wherein he has some issues with the General Manager asking for an opinion from Parnell Thompson, LLC, and he asked how said company could give an opinion from a competing law firm. Director Muhammad informed the Board that he had filed a complaint on Parnell Thompson, LLC with the Alabama Bar Association because Attorney Parnell sent a letter to Attorney David Sullivan stating he was going to advise the other Board members not to discuss the case where Judge Vance made them plaintiffs. Director Muhammad stated said law firm does not represent the Board. He then asked Chairwoman Lewis if she is removing attorneys that represent the Board without sufficient reason and turning the Board's legal representation over to a law firm that is in the middle of an ongoing investigation, and to attorneys of said firm that continue to request files be handed over to them. Subsequently, Director Muhammad asked how Board Attorney Mark Parnell could properly represent the plaintiffs in the lawsuit that is still in progress.

Following, Director Munchus said he was hoping the Board could add some economic development within the \$2 million set aside for the Contract Compliance Program. Director Munchus indicated he believes this should probably come under the scope of the Board. Director Munchus said if Chairwoman Lewis is uncomfortable with Fuston, Petway & French and ARCADIS administering the Contract Compliance Program, he supports bringing it back to the Board and letting the Board manage it. Director Munchus said he does not know if Attorney French would agree to this. Director Munchus said he believes the \$2 million has some merits wherein his thinking was said funds would be used to enhance economic and business development. Director Munchus said program was included to ensure all small businesses, particularly local small businesses, would have a fair opportunity to secure some of the Board's projects as well as from some other business entities in Birmingham.

Following, Director Muhammad commented the Board does not need to waste time talking about an excuse, which he pointed out \$2 million is not the issue, rather it is an attempt to get rid of the attorneys who are not involved in the investigation. Director Muhammad said Parnell Thompson, LLC came to the Board with the idea they would have to get the files back under Attorney Charlie Waldrep's people so they could protect them from the investigators.

Following, Chairwoman Lewis asked Attorney French if he had a comment. Attorney French said they would be agreeable. Subsequently, Director Munchus asked him if he is okay with the Board having additional input relative to how the \$2 million should be spent. Director Munchus said he thinks if Attorney French is agreeable to removing said amount from his contract this eliminates that concern. Following, Director Muhammad reminded the directors that when Attorney McKie was on the Board he said everything would have to come back to the Board, pointing out Fuston, Petway & French, LLP would just be administering said program and ARCADIS would work with them.

Subsequently, Director Dickerson asked how Parnell & Thompson are more suitable for the work and if Attorney French and his staff had conducted themselves in a less than professional manner. Chairwoman Lewis said she believes Attorneys Parnell & Thompson have the experience and the expertise. Director Muhammad said Fuston, Petway & French's contract that was approved by the former Board contained a provision wherein it would take a supermajority to terminate the contract. He then asked Attorney Parnell if the Board could vote to nullify the referenced contract without having a supermajority of votes. Following, Attorney Parnell said the letter Parnell & Thompson, LLC sent to the Board stated the "supermajority" provision is voided against public policy. Director Muhammad asked Attorney Parnell where said letter originated and if it is a conflict of interest for him to give an opinion when he is not a judge. At this point, Director Burbage called for a question. There was a disruptive outburst from Director Muhammad and some members of the meeting body. Subsequently, Chairwoman Lewis called for a roll call vote. After the roll call vote, the motion passed by a vote of 5 to 2, with Directors Lewis, Alexander, Clark, Burbage and Dickerson voting for the motion, and Directors Munchus and Muhammad voting against the motion. The following resolution was adopted:

"BE IT RESOLVED by The Water Works Board of the City of Birmingham (the "Board"), upon motion duly made by Mr. Tommy Joe Alexander and seconded by Ms. Deborah Clark, as follows:

1. That certain Agreement between the Water Works Board of the City of Birmingham and Fuston, Petway and French, LLP, dated November 22, 2016, is hereby terminated in accordance with said agreement.
  - 1.1 Fuston, Petway and French, LLP is hereby directed to work with the attorneys associated with Parnell Thompson, LLC to transition all Board legal work and files in a swift and timely manner such that no deadlines, statutes of limitation or other timeframes will be missed.
  - 1.2 Except for the transition of work and files set out in paragraph 1.A above, Fuston, Petway and French, LLP, including its employees, associates, agents, assistants and independent contractors are to immediately cease all work and perform no further services for the Board or its Directors, Management, and Employees unless expressly directed to do so in writing by Parnell Thompson, LLC.

Resolution No. 7414 is hereby adopted by Directors Lewis, Alexander, Clark, Burbage and Dickerson; Directors Munchus and Muhammad voted no."

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Following, the Board was asked to approve payments of invoices for professional services, as set forth in agenda items 2.1 through 2.5. The General Manager indicated staff recommends approval of the referenced items. Director Muhammad questioned how items 1.1 and 1.2 passed with four (4) votes when a supermajority is required. After the motion was made and seconded, Chairwoman Lewis called for the vote, and 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. Tommy Joe Alexander and seconded by Mr. George Munchus, that the Board hereby authorizes staff to execute payments to the following:

- 2.1 Carl Dalton NeSmith, Jr., LLC  
For retainer fee for February 2017 \$ 500.00
- 2.2 Ragsdale, LLC  
For professional services rendered from November 16, 2016 through January 26, 2017 \$ 4,150.00
- 2.3 Terminus Municipal Advisors, LLC  
For professional services rendered for January 2017 \$ 6,500.00
- 2.4 American Water Works Association (AWWA)  
For AWWA corporate membership subscription renewal - April 1, 2017 through March 31, 2018 \$ 20,588.00
- 2.5 Volkert, Inc.  
For professional services rendered for December 2016 \$ 37,535.45

Resolution No. 7415 is hereby adopted by unanimous vote.”

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Next, the General Manager asked the Board to approve payment of an invoice for professional services from David A. Sullivan, as set forth in agenda item 3. After the motion was made and seconded, Chairwoman Lewis asked if anyone had a question for Attorney Sullivan wherein the General Manager stated Director King had some inquiries and he indicated Director King is absent from today’s meeting. Subsequently, Chairwoman Lewis called for the vote, and 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 Ms. Sherry W. Lewis, that the Board hereby authorizes staff to execute payment to David A. Sullivan for professional services rendered from January 2 - 12, 2017 in the amount of \$8,375.00. Resolution No. 7416 is hereby adopted by unanimous vote.”

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Next, the General Manager pointed out Director Dickerson had asked staff to invite legislative lobbyist Gregory Jones to come before the Board and explain his role as a lobbyist for the Board. Following, Mr. Jones was recognized and he introduced himself. Mr. Jones said his firm, The Jones Group, is headquartered in Montgomery, Alabama, and he has been in the government affairs business for

nearly 17 years. Mr. Jones said he is coming into his third year representing the Board wherein his role is to serve as the liaison between the Board and the legislative body and state agencies as needed and the executive branch. Mr. Jones indicated the legislative session is off to a super fast start as expected wherein a lot of bills have been filed. He said he had reviewed and forwarded three (3) of the bills to the General Manager and Chairwoman Lewis wherein they could inform him if any of the bills would affect the Water Works Board. Subsequently, Mr. Jones said he is available for comments and would look at anything as it relates to the legislative session regarding the Water Works. Director Munchus asked Mr. Jones to include all Board members when he sends information so they would all have the same data. In response to Director Dickerson's inquiry as to what his specific priorities are relative to the work he does for the Board, Mr. Jones stated his main concern is to look out for the interest of the Water Works, search every bill that has been introduced to see if it mentions anything related to water, sewer, treatment facilities, etc. and forward such to the General Manager so that he can distribute it to the appropriate source to examine and see if it would have an effect on the Board. Mr. Jones said if it is something that would affect the Board he would properly relay the Water Works' concerns and position to the legislative body. Chairwoman Lewis thanked Mr. Jones for his remarks. Subsequently, the General Manager said he would forward the email he received from Mr. Jones this morning to the directors immediately after today's Board meeting, pointing out due to final preparations for said meeting he did not get an opportunity to send it to them. Following, the General Manager pointed out one (1) of the bills he read stated if you expand into a new area, the County Commission in that area can have an appointment on the Board pointing out this is a statewide bill. Director Muhammad asked Mr. Jones if he thinks the referenced bill would be reason for other areas where the Board has facilities with a small number of customers to petition to have a seat on the Board. Mr. Jones said he could not answer Director Muhammad's question, pointing out the referenced bill was just introduced and he is waiting for directions on how it would affect the Board. Mr. Jones said he would give the directors his opinion after he completes his review.

Following, the Board was asked to rescind Resolution No. 7372 adopted December 15, 2016, approving payments of invoices to Morgan Stanley relative to providing pension plan investment management and consulting services, as set forth in agenda items 4.1 and 4.2. Following, the General Manager explained that Morgan Stanley calculated its invoice amount of \$54,465.35 in item 4.1 based on managing \$129 million of the Board's assets, using 11 basis points of said amount and indicated said company did not start managing the Board's pension plan until January 2017. Following, the General Manager stated since Morgan Stanley reviewed the pension plan investment policy and it helped to select pension plan managers from October through December 2016, he indicated staff believes it is fair to pay the referenced company the \$30,000.00 wherein Morgan Stanley is satisfied with said amount. The General Manager indicated staff recommends approval of the referenced item. After the motion was made and seconded, the General Manager responded to a series of questions from Director Munchus relative to if Morgan Stanley had actively begun putting the investment managers in place as of January 1, 2017, what happened to the trustee situation and if Renasant Wealth Management no longer controls the funds for the pension plan. The General Manager replied he believes this started January 11 or 12, 2017 wherein the transfer of funds from Renasant to Regions started around September 9, 2016; however, Regions resigned as trustee. Therefore, the transfer from Renasant to BB&T started around November 1, 2016 to BB&T so that Morgan Stanley could begin investing. Following, Assistant General Manager Michael Johnson responded to various questions from Director Munchus relative to whether the transfer process has been completed, if there are other invoices currently pending from Morgan Stanley that would have to be paid, if payment would be based on the 11 basis points, and if payment would be due at the end of March. Assistant General Manager Michael Johnson indicated the OPEB trust was transferred November 1, 2016 and all pension plan assets were transferred around the end of January 2017, and he pointed out the best decision is to transfer funds after income has been received from the investments. He also said Morgan Stanley's invoice from the first quarter of 2017 would have to be paid wherein a payment date

would be discussed. Following, the General Manager said Morgan Stanley's contract requires payment at the beginning of each quarter based on the fair market value of the investment. He said when all of this is determined Morgan Stanley's invoice would be sent to BB&T wherein said company would pay it in accordance to Morgan Stanley's contract. Director Munchus asked if staff receives said invoice before it goes to BB&T and the General Manager said no. Assistant General Michael Johnson pointed out BB&T receives the invoice wherein the General Manager stated said company does not have to approve the invoice. Subsequently, Director Munchus asked that the referenced invoices be put on the agenda as an item of information for the directors, pointing out he realizes the directors do not have to approve it and indicated the Board is entitled to know the amount since it would be paid from the pension fund. The General Manager indicated said item would be sent to the directors. Following, Director Muhammad asked how the \$30,000.00 amount for Morgan Stanley's invoice was calculated, pointing out the original amount was \$54,000.00. The General Manager discussed how said company calculated its original invoice based on Morgan Stanley managing \$129 million of the water system. He stated because Morgan Stanley did not have the referenced amount to manage in October, November or December and indicated said company was not due to be paid based on 11 basis points according to its contract. Following, the General Manager pointed out Chairwoman Lewis and he met with Mr. Daemon Fishback of Morgan Stanley and negotiated an amount and a small profit based on the work Mr. Fishback believed they had done. Following, The General Manager responded to Director Muhammad's inquiry as to when the referenced meeting took place, pointing out two (2) weeks ago the amount on the agenda was \$40,000.00. The General Manager said initially his position was not to pay Morgan Stanley anything. He reminded the directors that former Board member Kevin McKie stated said company should be paid \$45,000.00, and indicated he did not know where said amount came from. He added that he had received an email from Attorney Samuel Ford of Fuston, Petway and French, LLP indicated Morgan Stanley should be paid said amount before the end of 2016. Following, the General Manager said at the January 12, 2017 Regular Board of Directors' Meeting Attorney McKie told him the amount would be changed to \$40,000.00. The General Manager pointed out this is how the amounts changed from \$54,000.00 to \$45,000.00 to \$40,000.00. Following, the General Manager said Attorney McKie was no longer on the Board after said meeting and the item was tabled. Subsequently, the General Manager indicated he takes responsibility for the \$30,000.00 invoice. Following, Director Munchus asked the General Manager if he put items 4.1 and 4.2 on the agenda and the General Manager responded yes. Director Munchus asked if said items could be tabled until the directors get a better clarification from Morgan Stanley since no one from said company is present at today's meeting. Chairwoman Lewis said Mr. Fishback called her and requested a meeting and she asked the General Manager to join them. She said Mr. Fishback talked about the work Morgan Stanley had done wherein he fully agreed to the \$30,000.00. The General Manager said he also talked with Mr. Fishback Tuesday night and he agreed to said amount. After some additional discussion on the transition of money from Regions to BB&T, Director Muhammad pointed out the money transfer was delayed by BB&T and indicated it was no fault of Morgan Stanley. Subsequently, the General Manager indicated staff recommends approval of said items. Subsequently, Chairwoman Lewis called for the vote, and 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. Tommy Alexander and seconded by Ms. Deborah Clark, that the Board hereby:

- 4.1 Rescinds Resolution No. 7672, approving payments of invoices to Morgan Stanley relative to providing pension plan investment management and consulting services in the total amount of \$54,465.35.
- 4.2 Approves payment of Morgan Stanley's settlement invoice relative to providing pension plan investment management and consulting services in the total amount of \$30,000.00; and to authorize the General Manager and/or the Assistant General Manager to pay said

amount.

Resolution No. 7417 is hereby adopted by Directors Lewis, Alexander, Clark, Burbage and Dickerson; Directors Munchus and Muhammad voted no.”

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Following, the General Manager asked the Board to take bids for replacement of various pipes and water services along various streets in the City of Birmingham, Alabama, as set forth in agenda items 5.1 and 5.2. He reported the referenced pipe in item 5.1 was installed in 1927 and 1929 wherein there have been 95 main breaks and 42 service line breaks. In addition, the General Manager reported the pipeline in item 5.2 was installed in 1929 wherein there have been 112 main line breaks and 80 service line replacements. Subsequently, the General Manager indicated staff recommends approval of said items and pointed out the formal bids and approvals would be brought back to the Board after the bids are awarded. Assistant General Manager Sonny Jones responded to Director Munchus’ inquiry as to whether said items would be good candidates for the on-call program. He stated it would depend on whether said items are an emergency, as when the health, safety and welfare of the public is in danger. He indicated he does not believe it would be a public safety emergency in the short run until staff can get said items bid and replaced. Director Munchus asked how long it would be before staff puts the items out to bid and Assistant General Manager Sonny Jones said perhaps within 30 to 45 days staff would be opening bids. After discussion, 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. Tommy Alexander and seconded by Ms. Deborah Clark, that the Board hereby authorizes staff to take bids on the following:

- 5.1 For replacement of approximately 3,975 feet of 2-inch galvanized steel pipe and 1,215 feet of 2-inch cast iron cement lined (DICL) pipe with approximately 1,715 feet of 4-inch DICL pipe; 1,535 feet of 6-inch DICL pipe; 1,965 feet of 8-inch DICL pipe and related appurtenances; and 121 water services along Mayfield Avenue SW; 19<sup>th</sup> Street SW; 20<sup>th</sup> Place SW; 22<sup>nd</sup> Street SW; 23<sup>rd</sup> Street SW; Delta Street South; Gamma Street South; Beta Street South; 16<sup>th</sup> Avenue South; 1<sup>st</sup> Place South; and 2<sup>nd</sup> Street South located in the City of Birmingham, Alabama, at an estimated out-of-pocket cost to the Board of \$1,470,500.00.
- 5.2 For replacement of approximately 5,300 feet of 2-inch galvanized steel pipe/2-inch unlined cast iron pipe and 1,870 feet of 2-inch cast iron cement lined (DICL) pipe with approximately 1,375 feet of 4-inch DICL pipe; 885 feet of 6-inch DICL pipe; 4,973 feet of 8-inch DICL pipe and related appurtenances; and 153 water services along Pine Tree Lane; 1<sup>st</sup> Avenue South; 86<sup>th</sup> Street South; 86<sup>th</sup> Place South; 87<sup>th</sup> Street South; Fulton Avenue North; and 49<sup>th</sup> Court North located in the City of Birmingham, Alabama, at an estimated out-of-pocket cost to the Board of \$1,736,000.00.

Resolution No. 7418 is hereby adopted by unanimous vote.”

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Next, the General Manager asked the Board to table agenda item 6 relative to awarding a bid to Spencer Management, LLC for the BWWB Boardroom expansion. He said the previous Board looked at said room’s setup wherein staff would like the nine-member Board to review. After the motions were made, and Director Muhammad commented on the plans being inadequate for the Boardroom and that the

Board could buy a building for the amount being proposed to renovate the current Boardroom. Following, Director Munchus said he was against tabling the above item and wanted to see it moved forward. He then commended the referenced company for its 42 percent Historically Underutilized Business (HUB) subcontractor participation. Following, Director Munchus said perhaps the Boardroom could become the Training Room and pointed out it would be nice to have more room so that additional people from the public could attend. After discussion, Chairwoman Lewis stated item 6 is being tabled to be sent to committee for further discussion relative to additional options wherein the Board could decide on an option for the Boardroom. Director Dickerson asked if any work had been done in the Boardroom and the General Manager said no. Subsequently, Chairwoman Lewis called for the vote. On a motion duly made and seconded, the following resolution was adopted with one abstention:

“BE IT RESOLVED By The Water Works Board of the City of Birmingham (“the Board”), on a motion duly made by Mr. Tommy Alexander and seconded by Ms. Deborah Clark, that the Board hereby tables item 6 to award bid to Spencer Management, LLC, an informal bidder, for the BWWB Boardroom expansion in the amount of \$558,585.33. [NOTE: In accordance with the Public Works Law, BWWB negotiated with two potential contractors based on an informal bid submittal to obtain the best price on the terms and conditions for the Board, and said vendor met those terms and conditions.] The Historically Underutilized Business (HUB)’s subcontractor participation is 42 percent. Resolution No. 7419 is hereby adopted by Directors Lewis, Alexander, Clark, Burbage, Muhammad and Dickerson; Director Munchus abstained from voting.”

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Following, the Board was asked to rescind Resolution No. 7313, adopted October 13, 2016, notice to terminate the Jefferson County Sewer Collection Agreement, as set forth in agenda item 7.1.; and to authorize the General Manager to notify Jefferson County that the Birmingham Water Works Board will continue to collect sewer charges, as set forth in agenda item 7.2. After the motion was made and seconded, Chairwoman Lewis recognized Director Muhammad for a PowerPoint presentation on said item. A copy is on file in today’s Board Meeting book. Following, Director Muhammad thanked Chairwoman Lewis for allowing him to speak and stated he wanted to present to the new Board members and the public the facts and history of Resolution No. 7313 relative to cancelling the Jefferson County Sewer Contract as he is aware. Following, Director Muhammad said when he came to the Board, he came as a member of the “Committee to Save Jefferson County.” He said one of the things he wanted to do was stop said county from forcing the Water Works to cutoff customers’ water because they could not pay outrageous sewer bills. Following, Director Muhammad said his proposal was approved by former Board Chairman Ronald A. Mims, Director George Munchus and himself, pointing out then Director Sherry W. Lewis and former Board member Kevin B. McKie voted against said resolution. Director Muhammad said Mr. James White, CPA, Porter White & Company, presented to the bankruptcy court that Jefferson County borrowed \$1.8 billion in Collateral Obligation Bonds at an interest rate of 9%. Director Muhammad stated according to what he was told the debt for said bonds increases. He said Mr. White stated to the court after 30 years of paying on the borrowed amount, the total balance would be \$2 billion, \$200 million more than the initial principle. Director Muhammad said the Environmental Protection Agency (EPA) states if a sewer rate is over 2% of the median household income, it is considered unfair to taxpayers, pointing out by the end of 40 years people living in Ensley will be paying 15% of their median household income in sewer fees. Following, Director Muhammad said in 2016, after the referenced resolution was passed, he received a letter from Commissioner Jimmie Stephens requesting a meeting. Director Muhammad said former Board Chairman Ronald Mims and he met with said commissioner and Commissioner George Bowman, pointing out said meeting had to be held with the directors that voted in favor of the above-mentioned resolution since the change could only be done by them at that time. He also said if the three (3) directors that were in favor of the resolution had met, it would have become a



public meeting, and he indicated Mr. Mims and he decided they would meet with said commissioners. Following, Director Muhammad said they negotiated a 7.5% collection fee, pointing out said fee is the same rate Jefferson County is paying the City of Bessemer to collect sewer fees. He stated said county wants the Birmingham Water Works to return to a 1949 agreement and collect its sewer fees for 3%. Following, Director Muhammad stated Act No. 865 of the Alabama State Law says any water system that collects for a county sewer system must charge between 5% and 10% wherein if the two (2) parties cannot agree, the collection fee is automatically set at 7.5%. Director Muhammad said all parties except Commissioner David Carrington agreed. Following, he stated considering the 7.5% they agreed he wanted to suggest that the Board puts \$1 million into the H2O Foundation for an indigent fund to help poor customers pay delinquent water and sewer bills and repair leaks up to \$1,500.00 on their property; \$1 million dollars to fund a Contract Compliance Program to increase participation and opportunity for Historically Underutilized Businesses (HUB)'s, Disadvantaged Business Enterprises (DBE)'s and Minority Business Enterprises (MBE)'s at the Birmingham Water Works, pointing out the Water Works is currently spending 4% of \$60 million annually with Black businesses. Director Muhammad said he proposed \$6 million to the Board to roll back the Water Works' rate increases, pointing out he met with Assistant General Manager Michael Johnson wherein they discussed this. Director Muhammad said the Board's rates are set 3.9%, and he indicated with the \$6 million from increasing the County fee to 7.5% for collection of sewer fees for Jefferson County, the Board could drop its rate increase by 1.7%. Director Muhammad said a report done by the Board's rate consultants, Raftelis Financial Consultants, Inc., and Attorney Calvin Grigsby, who was hired by the Board to assist said consultants, reported that when sewer rates reach 5% of the median household income in Jefferson County, the Birmingham Water Works would lose millions of dollars. He pointed out that currently 1 ccf of water costs \$3.39 while 1 ccf of sewer costs \$9.88. Director Muhammad indicated the County has 37 more years of sewer raises. Subsequently, Chairwoman Lewis thanked Director Muhammad for his presentation. Following, Director Munchus asked Director Muhammad to address the issue of the sewer cost, pointing out he is aware that under the law Jefferson County can petition the bankruptcy courts concerning sewer rates. He asked Director Muhammad if he had spoken with the new bankruptcy judge, pointing out he believes she would be more sensitive to the heavy debt that has been placed on the significant black population in Jefferson County. He then asked Director Muhammad if he had talked with said county's commissioners to see if they are willing to petition the courts to rollback sewer rates. Following, Director Muhammad said the current county commissioners are not willing, and he pointed out sewer rates are locked into the bankruptcy court wherein said rates would increase another 37 years.

Following, Chairwoman Lewis explained the purpose of items 7.1 and 7.2. She pointed out they received two different letters from Jefferson County wherein one letter from Mr. Jimmie Stephens, President of Jefferson County Commission, stated there was never a negotiated agreement and there is no agreement between BWWB and the County relative to the sewer collection fees. Chairwoman Lewis reported that the second letter was received from said commission's attorneys indicated there would be another lawsuit if the Water Works does not continue collecting said county's sewer rates. Chairwoman Lewis said the referenced letters were sent to former Chairman Ronald Mims. Following, Chairwoman Lewis reported she received an invitation to meet with Jefferson County commissioners and Mr. Tony Petelos wherein she accepted and indicated that Director Tommy Alexander attended the meeting with her. Following, Chairwoman Lewis informed the directors that the Board needs to get actual facts and numbers so that all directors can be on the same page before proceeding. Chairwoman Lewis said not continuing to collect sewer rates would involve facing another lawsuit and spending additional ratepayers' money. Director Muhammad stated said county cannot force the Board to be in a contract wherein Chairwoman Lewis said the Water Works is in a contract, pointing out a legislative act binds the Water Works and Jefferson County relative to said contract. Following, Chairwoman Lewis indicated she would like for the Board's team to meet with the county's team and find out if there are duplicate services being provided by the two (2) entities that could be reviewed. Following, Chairwoman Lewis added the

Board is taking a step back to look at everything and to bring all the numbers forward to see what the Board and the county have in common so rates could possibly be lowered. Director Munchus said he supports what Chairwoman Lewis said and applauds her for meeting with the commission and indicated he believes it is premature to rescind Resolution No. 7313, pointing out dialogue can continue. A discussion ensued by the directors on Jefferson County's filing a lawsuit against the Water Works Board relative to the collection of sewer agreement. Following, Director Muhammad then asked Board Attorney Mark Parnell if Jefferson County could file a lawsuit against the Board for not adhering to the contract and if the contract gives the Board the right to cancel. Attorney Parnell said the Board has the right to cancel the contract with a one (1) year notice, pointing out said county is asking the Board to rescind the termination of the sewer contract to allow time for both parties to talk. He indicated it would take a year for the county to get its own billing system or to take the Board to bankruptcy court. Following, Director Munchus asked Attorney Parnell if he believes said county would take the Board to bankruptcy court. Attorney Parnell stated the county could take the Board to said court and a bankruptcy judge could force the Board to remain in the contract. Attorney Parnell pointed out what is being asked is just to rescind the notice to terminate Jefferson County Sewer Collection Agreement wherein it would remove said item from the table. Director Muhammad asked Attorney Parnell if he believes a bankruptcy judge would be so unfair as to force the Board to stay in a contract that was entered in 1949 for the same 3% collection fee. Attorney Parnell said the referenced collection agreement between the Water Works Board and Jefferson County is not from 1949. Attorney Parnell pointed out there are statutes that control the agreement and he indicated said agreement is in place. Subsequently, Chairwoman Lewis pointed out said agenda item would give the Board and Jefferson County an opportunity for further discussion relative to the county acquiring their own billing department. Subsequently, Director Munchus requested that the aforementioned item be tabled, that a committee be set up and that meetings continue with the county. After the discussion, Chairwoman Lewis called for a roll call vote. After the roll call vote, the motion to rescind Resolution No. 7313 passed by a vote of 4 to 3, with Directors Lewis, Alexander, Clark, and Burbage voting for the motion, and Directors Munchus, Muhammad, and Dickerson voting against the motion. The following resolution was adopted:

“BE IT RESOLVED By The Water Works and Sewer Board of the City of Birmingham (“the Board”), on a motion duly made by Mr. Tommy Joe Alexander and seconded by Ms. Sherry W. Lewis, that the Board hereby:

- 7.1 Rescinds Resolution No. 7313, adopted October 13, 2016, which provided notice to terminate the Jefferson County Sewer Collection Agreement; and
- 7.2 Authorizes the General Manager to notify Jefferson County that Birmingham Water Works Board will continue to collect sewer charges under the existing Jefferson County Sewer Collection Agreement.

Resolution No. 7420 is hereby adopted by Directors Lewis, Alexander, Clark and Burbage; Directors Munchus, Muhammad and Dickerson voted no.”

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Next, the General Manager asked the Board to adopt a resolution establishing its committees, effective February 9, 2017 through December 31, 2017, as set forth in agenda item 8, with appointed presiding Board committee members, senior executive management and consultants to serve on said committees. The General Manager indicated Chairwoman Lewis sent the directors a list of committee appointments. Following, Chairwoman Lewis stated she hopes everyone agrees with said list and asked the directors if they had any questions. Following, Director Dickerson disagreed and respectfully removed

herself from the Communications Committee. Director Munchus said he does not favor any committees and stated they just waste time, and indicated he would participate wherever he is asked. Following, Chairwoman Lewis said all Board members can attend all committee meetings. She pointed out only the committee members could recommend committee matters to the full Board to be voted on. Following, Director Muhammad asked how committee members request a committee meeting. Chairwoman Lewis replied that senior executive management informs committee members when committee meetings are needed relative to certain items. Chairwoman Lewis pointed out she has never called any committee meetings and indicated she has taken recommendations from said management when there are issues. Chairwoman Lewis asked Director Muhammad to contact the General Manager if he needs to schedule a committee meeting. Following, Director Dickerson asked Chairwoman Lewis to explain to the directors, for the record, how she assigned appointments to the committees. Chairwoman Lewis said as she reviewed the committee list and talked to directors wherein she knew some of their expertise. She said committee assignments were made based on the following: Business and Economic Development – Director Tommy Alexander is a former mayor, Director Munchus has always been concerned with such, and Director Clark has been an entrepreneur for many years; Finance – Director Burbage is Chief Financial Officer for the Shelby County Water System; Engineering and Maintenance – Director King is an attorney and also an engineer; Human Resources – Director Munchus is in education and has served on said committee concerning the employees; Communications – Director Clark has been in business for quite some time; and Executive – noting said committee is always led by the Chair of the Board. Subsequently, a motion was duly made and seconded and the following resolution was adopted:

“WHEREAS, on May 8, 1997, The Water Works Board of the City of Birmingham (“The Water Works Board”) adopted said committees for the purpose of working with staff in certain areas in helping the Board to establish overall policies.

WHEREAS, on February 9, 2017, on a motion duly made by Tommy Joe Alexander and seconded by Deborah Clark, that The Water Works Board hereby approves and establishes certain Board committees and membership on said committees.

NOW, THEREFORE, BE IT RESOLVED that The Water Works Board’s Committees and respective members shall be as reflected on the list of Board Committees attached hereto these minutes. Resolution No. 7421 is hereby adopted by unanimous vote.”

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Following, the General Manager asked Board members if they had any new business and Dr. Dickerson said she brought up the policy and procedures for the Speaker’s Policy. Chairwoman Lewis stated said policy would be reviewed at a Communications Committee meeting and she pointed out said committee established the referenced policy. Chairwoman Lewis said at that time the Board consisted of five (5) members wherein three (3) directors voted in favor, Director Munchus abstained and she voted no because the reference policy contains a lot that she disagrees with. Subsequently, Chairwoman Lewis stated said policy would have to be changed at the proper committee. Following, Director Dickerson asked if the directors would have to wait for the committee’s recommendation before they discuss the Speaker’s policy and Chairwoman Lewis responded yes. Director Dickerson then asked what would happen with the speakers in the meantime and Chairwoman Lewis said the Board would follow its current policy. Chairwoman Lewis pointed out when revisions need to be made to any policies they are sent back to the appropriate committees for discussions and the recommended revisions are brought back to the full Board for approval. Following, Director Dickerson asked if this means the ratepayers can only speak once every two (2) months, and Chairwoman Lewis said yes, according to said policy. Following, Director Muhammad asked if the Communications Committee could meet as soon as possible, pointing out he is

available Tuesday. Chairwoman Lewis stated said committee has two (2) members and could meet and she pointed out a 24-hour notice required prior to a meeting. Following, Chairwoman Lewis said Directors Muhammad and Clark would have to coordinate this with Executive Assistant Grace Amison because she would send out the meeting notice to the directors and post the meeting notice for the public. Director Dickerson asked Chairwoman Lewis if it is her right as Chairwoman to suspend the Board's rules relative to public speakers wherein Chairwoman Lewis responded yes and indicated she is following the current policy today.

Following, Director Muhammad said it came to his attention after reading an article in *The Birmingham News* written by Mr. John Archibald that two (2) years ago, forensic CPA Michael Mason wrote the initial consultants and management were inexperienced and failed to consider the internal control procedure and process difficulties and high cost of designing the software. Director Muhammad said he called Mr. Archibald and asked him where he got such information wherein Mr. Archibald stated the former Board hired Mr. Mason. Following, Director Muhammad said he believes the entire Board should have access to Mr. Mason's report because it appears what he wrote is happening with SAP. Director Muhammad also said he thinks staff cannot use meter reading as being the cause of the billing problem, pointing out the obstacle seems to be a SAP problem. He said since Mr. Mason stated this in his report, he thinks the Board should investigate what is going on with SAP as the Board is being criticized because the Board is at the top. Chairwoman Lewis said an Executive Committee Meeting would be scheduled so that all directors could address the serious issue. Chairwoman Lewis indicated staff has put some measures in place. Subsequently, Chairwoman Lewis asked the General Manager to make certain all Board members have a copy of Mr. Mason's report.

Next, Director Muhammad informed the Board that he had filed a complaint with the Alabama Bar Association against Parnell Thompson, LLC. Chairwoman Lewis stated this is personal and not new business wherein Director Muhammad said it is new business because, if he filed a complaint against said firm, he has no attorneys at the Water Works to represent him. Chairwoman Lewis pointed out to Director Muhammad that he personally filed the complaint and not the Board. Director Muhammad asked who represented him as a sitting board member. Following, Attorney Parnell informed Director Muhammad as a board member he does not have the right to his own attorney because Parnell Thompson, LLC represent the company through the collective will of the majority. In addition, he commented although there are some minority members who want to vote some opposition wherein that does not mean said firm does not still represent the Water Works Board. Attorney Parnell said four board members have chosen as individuals to file a lawsuit or to become adverse with the corporation wherein they are represented by Attorney David Sullivan. He stated Parnell Thompson, LLC cannot ethically have conversations with them about that. He indicated that is the message that was given to Mr. Sullivan. Director Muhammad commented to Attorney Parnell that he has told other board members not to discuss the case with him and he indicated as a board member I am saying I don't have proper representation. Director Muhammad said Attorney Sullivan was hired because the Board's former attorney would not get into matters to where it appears he represents the old Board's in deference to the new Board. Director Muhammad said everything Attorney Parnell has done has been to gain and control files of that the Board's former law firm (Waldrep Stewart & Kendrick) was involved in and is being investigated.

Subsequently, Attorney Parnell said Director Muhammad has made false claims relative to files Parnell Thompson, LLC is trying to get. He said just over a year ago, the collective will of the Board made the decision to change law firm. Attorney Parnell stated Attorney Mary Thompson and he previously worked for the Board's former law firm (Waldrep, Stewart & Kendrick) and indicated they did not like the Board's decision to change law firm; however, Attorney Parnell pointed out they were professional about it and honored the Board's choice. Attorney Parnell said they worked properly to transfer files they had to the Board's new law firm. Following, Attorney Parnell said action taken by the

Board today is no different from action that the Board took a year ago. Subsequently, Attorney Parnell said they are only asking Fuston, Petway & French, LLC to transfer the files they are working on to Parnell Thompson, LLC so that said firm can continue to represent and defend the Board in lawsuits. Attorney Parnell said allegations Director Muhammad has made relative to Grand Jury subpoenas are untrue wherein Parnell Thompson, LLC has nothing to do with said jury.

Following, the General Manager called to the directors' attention that four (4) persons had signed up to speak. Prior to the speakers, he informed the directors that Executive Assistant Grace Amison reminded him Mr. Mike Mason's report is in the Diligent's Resources Center wherein they can review on their iPad and indicated he could print a hard copy or assist them with accessing the report. The General Manager said Diligent has a lot of resources from prior years and pointed out said report was done in 2014.

Subsequently, Chairwoman Lewis reminded speakers they would be allowed three (3) minutes each to address their concerns to the Board. She pointed out that according to the current Speaker's Policy, Board members do not have to respond to any questions and may do so if they wish.

Following, Speaker Carlton Henderson was recognized and he stated when he returned home after going out of town for about two (2) weeks, he noticed his water bill was high. Following, Mr. Henderson said after a Customer Service Representative reviewed his bill, he was told he had only used half the number of ccf's that he used the previous month; however, his bill was only reduced by \$5.00. Mr. Henderson stated said representative pointed out to him that Jefferson County takes \$17.00 every month. He said he thinks the Board should not give said county any money because it is responsible for Jefferson County's bankruptcy problem wherein they are still trying to find out who is at fault. Following, Mr. Henderson said things are so complicated and pointed out the water bills are hard to read and several entities are taking something out. Following, Director Munchus said the Board did not put Jefferson County in bankruptcy and pointed out said county's five (5) commissioners chose to do this when they did not have to do so from a business standpoint. Director Munchus asked Mr. Henderson to stay involved and alert and to let said commissioners know he is watching them. Subsequently, Chairwoman Lewis thanked Mr. Henderson for his comments.

Following, Speaker Darryl Jones (not BWWB employee) was recognized and he said today is his first time attending a Board meeting. Following, he asked if it is possible to suspend or put today's meeting on hold and what the procedure would be and if it is likely to appeal anything that is voted on and how this would be done. Following, Chairwoman Lewis asked Mr. Jones if he had finished his questions and if he wanted to yield the remainder of his time wherein he said yes. Chairwoman Lewis thanked him for his remarks. She said with reference to the rules of Board meetings, the directors adhere to Robert's Rules of Order. Following, Chairwoman Lewis said the Board does not have an appeal process and indicated it has the right to vote items up or down and bring them back to the table.

Following, Speaker LeDarius Hilliard was recognized and he stated he is President of the Jefferson County Millennium Democrats and a Member of the State Democratic Executive Committee. Mr. Hilliard said he is disappointed by the Board's actions today and actions it has taken since the beginning of this year. He said at the end of the day no Board member is the boss, pointing out ratepayers are the boss. Following, Mr. Hilliard said when someone has a contract they believe it is their obligation to fulfill the agreement and to see it through. He said the Chair should not override, talk over people and deny them a chance to speak, but should be respectful always. Mr. Hilliard asked Director Muhammad if the vote today to terminate Fuston, Petway & French, LLPs' contract was done illegally. He said they were told from the beginning that termination of said contract would require a supermajority of votes from the directors. Following, Mr. Hilliard said, considering the magnitude of terminating the Jefferson

County Sewer Collection Agreement, does it not make sense to table item 7.1 until the directors receive all of the information; and why the Board wants to limit ratepayers from speaking in a public meeting when most of them are seeing \$500.00 and \$600.00 water bills. Following, Director Muhammad said he believes the Board should have determined whether the supermajority language in the referenced law firm's contract is enforceable. He said Attorney French distributed a letter from the Bar Association that indicated the supermajority issue in his clause is legal. Following, Director Muhammad said the Board would work on the Speaker's Policy, pointing out he believes the directors are in favor of having a policy that is more flexible and liberal than the current one. Following, Director Dickerson stated it is a fact that the Alabama Bar Association says Fuston, Petway & French, LLPs' contract was ratified and that the provision to have a supermajority would stand.

Following, Speaker Iva Williams was recognized and he stated he agrees with the earlier speakers. Mr. Williams said he thinks it is interesting some people are silent while others are allowed to speak. Mr. Williams said as an entrepreneur, ratepayer and citizen of the State of Alabama, Jefferson County and Birmingham, he believes he should be afforded the opportunity of being one (1) of the Birmingham Water Works Board's vendors. Following, Mr. Williams asked how he could become a vendor of the Water Works. He noted that he has approached The Lewis Group about working with them. Following, Mr. Williams said vendors do not want to help you take their business wherein he hopes the Board would create some type of programs so that vendors who want to do business with the Board would be able to do so. He also said it is somewhat unfair for the sitting professionals to decide who does or does not have experience and pointed out knowledge is gained by getting on board, doing the work and learning it. Following, Mr. Williams said the directors were chosen because of their expertise wherein they were given a chance. Mr. Williams said he is asking the Board, especially for young people and minorities, to tell them exactly what the pathway is to doing business with the Water Works. Subsequently, Chairwoman Lewis reminded Mr. Williams several times that his three (3) minutes were up and she eventually asked security to restore order. Following, Director Munchus stated the Board wants to do business, particularly with local Historically Underutilized Businesses (HUB)'s since they have not had the opportunity to participate for the past 50 years. He advised Mr. Williams that one (1) way to do business with the Water Works is to go to its website, enter the name of his business and his expertise on the Board's vendor list and compete when the bids go out. Director Munchus said as it relates to professional services, Mr. Williams can send an unsolicited proposal to the General Manager. Director Munchus asked Mr. Williams to send a copy of said proposal to him and the General Manager.

Following, Speaker Ricky Jones of Jones Utility & Contracting Company, Inc. was recognized and indicated he was one (1) of the Board's on-call contractors. He said he believes someone accused his company of not having any minority status on a couple of projects the Board awarded to him. Following, Mr. Jones offered proof to the Board that the allegation is not true and stated his company has been helping minority contractors in his district. The General Manager thanked Mr. Jones.

As there was no further business before the Board, a motion was duly made and seconded, and the meeting adjourned at 10:52 a.m.

/s/  
Sherry W. Lewis  
Chairwoman/President

Attest

/s/

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Brett A. King, Esq.  
Secretary-Treasurer