

MINUTES OF THE REGULAR BI-MONTHLY MEETING OF DIRECTORS  
OF THE WATER WORKS BOARD OF THE CITY OF BIRMINGHAM  
NOVEMBER 22, 2016

The regular bi-monthly meeting of the directors of The Water Works Board of the City of Birmingham was held on Thursday, November 22, 2016, at 9:00 a.m., at 3600 First Avenue North, Birmingham, Alabama.

The following Directors were present: Ronald A. Mims, Kevin B. McKie, Sherry W. Lewis, and William R. Muhammad. Director George Munchus was absent.

Inasmuch as four Directors were present, Chairman Mims declared a quorum in attendance.

The meeting was also attended by: Mac Underwood, General Manager; Michael Johnson and Sonny Jones, Assistant General Managers; Grace E. Amison, Executive Assistant to the Board of Directors; George Anderson, Ben Sorrell, Barry Williams, Paul Lloyd and Geoff Goodwin, Board Employees; Courtney French, Paige Goldman, and Sam Ford; Matthew Arrington, Terminus Municipal Advisors, LLC; Jerry Jones and Brian Ruggs, ARCADIS US, Inc.; Jessie J. Lewis, Sr., Dorian Kendrick and Max Rykov, Lewis & Company; David Merrida, Birmingham Construction Industry Authority, Inc.; Chandra Abesingh, CEAssociates Jeff Sherrer, Blount County Commission; Kent Hartzog, GS&P; and Debra Taylor, Visitor.

As there was a quorum, the meeting was called to order at 9:00 a.m., and Human Resources Manager Paul Lloyd opened the meeting with prayer.

Next, the General Manager proceeded with the agenda and he asked the Board to adopt resolutions commending Senior Filter Operator Michael Walton from the Operations and Technical Services Division and Organizational Development Specialist Marilyn Vertison from the Finance and Administration Division, as set forth in agenda items 1.1 and 1.2., respectively, as Employees of the Month for November 2016. He indicated staff recommends approval of the referenced items. On a motion duly made and seconded the following resolutions were adopted:

“BE IT RESOLVED By The Water Works Board of the City of Birmingham (“the Board”), on a motion duly made by Mr. Kevin B. McKie and seconded by Mr. Ronald A. Mims, that the Board hereby recognizes and commends Michael Walton, Senior Filter Operator at Western Filter Plant, for receiving the Operator of the Year Award for Alabama as presented at the American Water Works Association Alabama/Mississippi Section Conference in Montgomery, Alabama on October 10 - 12, 2016 as the Operations and Technical Services Division’s Employee of the Month for November 2016, on having achieved outstanding job performance, attendance and work above expected levels.

RESOLVED FURTHER, that the Board and the General Manager are hereby authorized to sign a formal resolution, the wording of which will carry out the intent herein, and a copy of which will be presented to the employee named above. Resolution No. 7342 is hereby adopted by unanimous vote.”

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“WHEREAS, the Board has established an Employee of the Month Program; and

WHEREAS, Marilyn Vertison has been selected as the Finance and Administration Division's Employee of the Month for November 2016; and

WHEREAS, the Board desires to recognize and commend the employee who has been selected as Employee of the Month; and

NOW, THEREFORE, BE IT RESOLVED, on a motion duly made by Mr. Kevin B. McKie and seconded by Mr. Ronald A. Mims, that the Board hereby recognizes and commends Marilyn Vertison for having been selected as the Finance and Administration Division's Employee of the Month for November 2016.

BE IT FURTHER RESOLVED, that in recognition of Marilyn Vertison, 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 Ms. Marilyn Vertison. Resolution No. 7343 is hereby adopted by unanimous vote."

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Following, Human Resources Manager Paul Lloyd recognized Mr. Walton and noted he was nominated by Water Treatment Manager Floyd Stephens and Superintendent of Purification Jonathan Harris. Mr. Lloyd read Mr. Walton's commendation write-up, recognizing him for receiving the 2016 "Operator of the Year Award" for Alabama that was presented by the Alabama-Mississippi Section of the American Water Works Association (AWWA) at its conference in Montgomery, Alabama on October 10 – 12, 2016. Mr. Lloyd said Mr. Walton was chosen for said award for excellence in operations through competition with operators representing other water utilities in Alabama. Following, Mr. Lloyd said under Mr. Walton's guidance the Western Filter Plant has been recognized for consecutive "Best Operated Plant" awards from the Alabama Water and Pollution Control Association (AWPCA); AWWA Partnership Phase IV Award, pointing out said award is the highest level of water treatment success wherein the Western Filter Plant is the 13th treatment plant in North America to successfully complete all four (4) phases of the Partnership for Safe Water Program and progress to the "Excellence in Water Treatment" award level. Mr. Lloyd said Mr. Walton uses his special gifts of training, organizing and leadership to accomplish many goals. Subsequently, Mr. Lloyd congratulated Mr. Walton and the meeting body applauded him for a job well done. On behalf of the Board and senior executive management, Chairman Mims expressed appreciation to Mr. Walton and presented him with a commendation resolution along with a \$250.00 check.

Next, Mr. Lloyd recognized Ms. Vertison and he stated Ms. Vertison has made a strong impact within the short time she has been with the company. He indicated Ms. Vertison was nominated by Training, Organizational Development and Safety Officer Rhonda Lewis. Following, Mr. Lloyd read the commendation write-up, recognizing Ms. Vertison for her outstanding performance and exemplary internal customer service. Mr. Lloyd stated Ms. Vertison led a Career/Workforce Development plan to create a career path plan for employees in the Distribution Department. He said Ms. Vertison facilitated meetings with said department and Human Resources to execute strategies that would assist in bridging the gap between the Water Works' current and future workforce. Following, Mr. Lloyd stated said plan would improve career growth and advancement opportunities for employees in the Distribution area and it would be implemented in January 2017. In addition, he said Ms. Vertison provided a professional skills Accurate Data Transfer training course to help employees who enter a lot of data and have to work quickly with data entry and processing. Following, Mr. Lloyd said Ms. Vertison is leading a key project on the Board's employee engagement initiative and has also been working with all departments to assist them in developing quality performance measures to help improve organizational performance standards.

Mr. Lloyd thanked Ms. Vertison for her hard work and the meeting body applauded her for a job well done. On behalf of the Board and senior executive management, Chairman Mims expressed appreciation to Ms. Vertison and presented her with a commendation resolution along with a \$250.00 check.

Following, the General Manager informed the Board that the Birmingham Water Works would receive another award from the Training Magazine's Annual Top 125 for employer-sponsored workforce training and development programs. Assistant General Manager Michael Johnson said at least one (1) Board member has not heard or been involved in briefings relative to what senior executive management does with employee engagement. He pointed out that said management met with the company's Employee Association on yesterday wherein he believes a presentation to the Human Resources Committee would communicate initiatives that are in place to increase said engagement.

Next, the Board was asked to adopt resolutions, as set forth in agenda item 2, commending the Shades Mountain Filter Plant's Staff for receiving the "Plant of the Year" Award for excellence in operations and water quality at the American Water Works Association's Alabama – Mississippi Section Conference held in Biloxi, Mississippi on October 12, 2015; and the Western Filter Plant's Staff for receiving the "Plant of the Year" Award for excellence in operations and water quality at the American Water Works Association's Alabama – Mississippi Section Conference held in Montgomery, Alabama on October 12, 2016. On a motion duly made and seconded, the following resolutions were adopted:

“WHEREAS, The Water Works Board of the City of Birmingham supports its various water treatment plants; and

WHEREAS, Shades Mountain Filter Plant has received recognition by the American Water Works Association's Alabama/Mississippi Section (AWWA AL/MS) and was awarded the "Plant of the Year" award in Alabama in 2015 presented to the plant that has contributed greatly to the advancement of the water industry through quality work and efforts; and

WHEREAS, on October 12, 2015, at the annual conference in Biloxi, MS Shades Mountain Filter Plant Staff received recognition from the AWWA AL/MS Section; and

WHEREAS, the Board is proud and desires to commend the Shades Mountain Filter Plant Staff for the outstanding manner in which they perform their duties with professionalism and excellence.

NOW, THEREFORE, BE IT RESOLVED, that The Water Works Board of the City of Birmingham does hereby commend the Shades Mountain Filter Plant Staff for this recognition by the American Water Works Association's Alabama/Mississippi Section.

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 Shades Mountain Filter Plant Staff. Resolution No. 7344 is hereby adopted by unanimous vote.”

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“WHEREAS, The Water Works Board of the City of Birmingham supports its various water treatment plants; and

WHEREAS, Western Filter Plant has received recognition by the American Water Works Association's Alabama/Mississippi Section (AWWA AL/MS) and was awarded the "Plant of the Year"

award in Alabama in 2016 presented to the plant that has contributed greatly to the advancement of the water industry through quality work and efforts; and

WHEREAS, on October 12, 2016, at the annual conference in Montgomery, AL Western Filter Plant Staff received recognition from the AWWA AL/MS Section; and

WHEREAS, the Board is proud and desires to commend the Western Filter Plant Staff for the outstanding manner in which they perform their duties with professionalism and excellence.

NOW, THEREFORE, BE IT RESOLVED, that The Water Works Board of the City of Birmingham does hereby commend the Western Filter Plant Staff for this recognition by the American Water Works Association's Alabama/Mississippi Section.

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 Western Filter Plant Staff. Resolution No. 7345 is hereby adopted by unanimous vote.”

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Next, Assistant General Manager Sonny Jones was recognized and he indicated employees from said plants were in attendance at today's Board meeting. Following, he informed the directors that Assistant General Manager Darryl Jones was absent from said meeting. Assistant General Manager Sonny Jones said the Western and Shades Mountain Filter Plants were awarded "Plant of the Year" from the AWWA in 2016 and in 2015, respectively. He said a lot of things are said and written about the Birmingham Water Works but not much is said about the quality of water that the company produces. Assistant General Manager Sonny Jones pointed out that the quality of water produced and distributed to the Board's customers is not by accident wherein it takes a lot of hard work. He said senior executive management constantly receives telephone calls from people across the country inquiring as to how the Birmingham Water Works produces its water and how they can do likewise. Assistant General Manager Sonny Jones said the community needs to be extremely proud of accomplishments by the referenced plants' and he expressed his appreciation. Following, Western Filter Plant Superintendent Jonathan Harris, Shades Mountain Filter Plant Maintenance Supervisor Timothy Harris and Western Filter Plant Senior Filter Operator Michael Walton introduced themselves. Next, Director Lewis thanked the referenced employees and staff, pointing out she recognizes how important their work is and the hard work they have done and continue to do. Following, Director Lewis stated the Birmingham Water Works is one (1) of the top five (5) water utilities in the country and she indicated said company is number one (1) because of staff at the above-mentioned plants. Subsequently, the meeting body applauded them for their accomplishments.

Next, the General Manager asked the Board to authorize reimbursement of the operating account for capital expenditures for the period ended October 31, 2016, as set forth in agenda item 3. He indicated staff recommends approval of the referenced item. On a motion duly made and seconded, the following resolution was adopted:

“WHEREAS, ARCADIS US, Incorporated, in a Certificate dated October 14, 2016, certified that during the period ending October 31, 2016 that there were expenditures for the cost of system improvements, which were paid out of the Operating Account and reimbursement of that account is now due in the preliminary amount of \$2,928,208.56 and;

WHEREAS, transfers to the Operating Account can be made from any, or a combination, of the following: the 2002 Construction Fund, the Improvement Fund, and/or the Revenue Account.

NOW, THEREFORE, BE IT RESOLVED By The Water Works Board of the City of Birmingham, on a motion duly made by Mr. Kevin B. McKie and seconded by Mr. William R. Muhammad, that the Trustee be, and is hereby instructed to immediately transfer \$2,928,208.56 to the Operating Account from any, or a combination, of the following: The 2002 Construction Fund, the Improvement Fund, and/or the Revenue Account. Resolution No. 7346 is hereby adopted by unanimous vote.”

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Following, the General Manager asked the Board to approve payments of invoices, as set forth in agenda items 4.1 through 4.9 and he indicated staff recommends said items for approval. On a motion duly made and seconded, 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. Kevin B. McKie and seconded by Mr. William R. Muhammad, that the Board hereby authorizes staff to execute payments to the following:

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|-------|--|---------------------|
| 4.1   | <u>Ragsdale, LLC</u><br>For professional services rendered through November 16, 2016                                 | \$ <u>1,825.00</u>  |
| 4.2   | <u>The Jones Group, LLC</u><br>For professional services rendered for November 2016                                  | \$ <u>5,000.00</u>  |
| 4.3   | <u>Dominick Feld Hyde, P.C.</u>  |                     |
| 4.3.1 | For professional services related to BWWB - Pension Plan -<br>Plan Documents & Administration - October 3 - 28, 2016 | \$ <u>4,176.00</u>  |
| 4.3.2 | For professional services relative to BWWB - OPEB<br>October 24, 2016  | \$ <u>7,760.40</u>  |
| 4.4   | <u>Ingenuity</u>   |                     |
| 4.4.1 | For professional services related to Telecommunications<br>Optimization Services for March, April and May 2016       | \$ <u>6,700.25</u>  |
| 4.4.2 | For professional services related to Telecommunications<br>Optimization Services for June, July and August 2016      | \$ <u>6,644.60</u>  |
| 4.5   | <u>Raftelis Financial Consultants, Inc.</u><br>For professional services rendered for October 2016                   | \$ <u>24,995.88</u> |
| 4.6   | <u>The Lewis Group</u><br>For professional services rendered for October 2016  | \$ <u>25,000.00</u> |
| 4.7   | <u>Volkert, Inc.</u><br>For professional services rendered for September 2016  | \$ <u>30,842.08</u> |

- 4.8 Fuston, Petway & French, LLP  
For professional services rendered for October 2016 \$ 109,915.36
  
- 4.9 ARCADIS U.S., Inc.  
For professional services rendered per September’s 2016 Progress  
Report (September 2016) \$ 471,266.25

Resolution No. 7347 is hereby adopted by unanimous vote.”

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Next, the General Manager requested the Board to adopt a resolution to allow employees to sell up to four (4) weeks of accrued or unused vacation of each employee’s vacation balance as of November 30, 2016, as set forth in agenda item 5. He noted that he had spoken with each Board member relative to said item and he pointed out the Water Works had permitted employees to sell vacation several years ago. Following, the General Manager explained that a lot of employees could not take vacation on a normal schedule because of the ongoing SAP implementation project this year and the drought. He said senior executive management recommends employees to be paid for vacation time they were unable to take so that it would come off the books. 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, on a motion duly made by Mr. Kevin B. McKie and seconded by Mr. William R. Muhammad, that the employees of the Water Works Board have worked diligently throughout the year to: a) maintain system operations, b) manage operating cost at approximately \$5 million dollars under budget, c) labor costs at approximately \$990,000.00 under budget, d) implementing SAP Customer Billing and Relationship System, e) managing extreme drought conditions, and f) completing capital projects planned in the 2016 capital budget. Further, in accordance with the Board’s Salary Administration plan and to show employee appreciation for a job well done, the Board hereby approves and authorizes the officers and general manager to execute any documents necessary to allow employees to sell up to four (4) weeks of accrued/unused vacation time in excess of two (2) weeks in December 2016. The vacation buy back cost will not exceed \$500,000.00. Resolution No. 7348 is hereby adopted by unanimous vote.”

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Following, the Board was asked to approve an agreement with Fuston, Petway & French, LLP, as set forth in agenda item 6, to provide general legal services for a three-year period effective November 22, 2016; and to authorize the Chairman to accept said agreement. After the motions were made, Director Lewis indicated she was surprised to see the referenced item on today’s agenda because she was not involved in any discussions concerning said agreement. She asked who wrote said agreement and Board Attorney French stated he drafted the agreement, pointing out said firm’s previous agreement that was executed in September 2015 for one (1) year has expired. Director Lewis stated her concern is the stipulations that are in the agreement because they do not protect the Board and they take away its control. Following, Director Lewis inquired as to why the referenced agreement was not discussed with her as a Board member. Attorney French replied he emailed said agreement to all Board members yesterday wherein Director Lewis pointed out said attorney’s timeline allowed her less than 24 hours to review the agreement and she added it took more than said hours to prepare the referenced agreement wherein some prior discussion had to have taken place. Subsequently, Director Lewis asked the General Manager when he received said agreement, if he had read it and if due process had been followed. The General Manager indicated he saw the agreement yesterday afternoon. Following, Director Lewis

inquired of the whereabouts of “Exhibit A” that was referenced in the new agreement and Attorney French stated said exhibit was not included and indicated it was included in the previous agreement. After reading a portion of the new agreement that mentioned the exhibit as being a part of the new agreement, Director Lewis asked if someone could provide her with a copy. Following, the General Manager said the referenced exhibit in the previous agreement was a rate schedule that listed hourly rates from \$125.00 to \$250.00. He said the new hourly rate of \$275.00 is listed in item six (6) on page three (3) of Attorney French’s proposed new agreement. Following, Director Lewis expressed great concern with the Board relative to increasing the attorneys’ fees at this point. She said the Board’s previous attorneys were paid an hourly rate of \$175.00 to \$250.00. She also said under the previous agreement, the Board’s current attorneys charged hourly rates based on the following years of experience: 0 – two (2) years \$125.00; two (2) – five (5) years \$150.00; five (5) to ten (10) years \$200.00; ten (10) – 15 years \$225.00; and over 15 years \$250.00 per hour wherein each lawyer would now be paid \$275.00 under the current agreement. Following, Director Lewis asked how long it took the Board’s previous attorneys to get a raise and the General Manager stated hourly rates for said attorneys remained the same from 2001 through 2015.

Following, Director Lewis said the new agreement indicates the Board’s current attorneys want to administer the Contract Compliance Program based on stipulations in said agreement. When she questioned whether the Board had voted to initiate said program, Director Muhammad said the Board had agreed. Director Lewis said she believes the Board voted to move \$2,000,000.00 and indicated she does not recall the Board voting to start said program. Following, Director Muhammad said the Board voted to move the money and to initiate the referenced program. Director McKie said there would be nothing to administer if the Board does not start said program. Director Lewis commented that it is strange such language would be included in the agreement and she again expressed her concern about the verbiage, pointing out according to item 4 on page two (2) of the new agreement, the Board would hand over its power to the attorneys, if it is approved. She then asked why it is not a part of the Board’s duties to decide on said program. Director Lewis pointed out that a “supermajority” of votes would be needed to terminate the new agreement with the Fuston Petway and French law firm and she questioned why the Board would accept an agreement that would be difficult to modify. Director Lewis said the wording is the same as language that was in Russell Management Group, LLC’s (RMG) agreement, which the Board later rescinded. Following, Director McKie stated the new agreement would not make it difficult for the Board to make changes or affect how the Board could hire other attorneys to do whatever it could give to its current attorneys. Director Lewis pointed out the previous agreement specified things would be done with the Board’s approval wherein such wording is not included in the new agreement. Director Lewis said she had not spoken with Attorney French and noted he does not respond to her emails.

Subsequently, Director Lewis asked Attorney French why the new agreement indicates his law firm would manage the Contract Compliance Program and Attorney French said he had a conversation with Director Muhammad after the Board voted to approve the budget for said program at the November 10, 2016 Regular Board of Directors’ Meeting, relative to his firm administering and helping to oversee the referenced program. Director Lewis asked Attorney French did he not think it would be wise to discuss a \$2,000,000.00 project with all of the Board members wherein Attorney French stated Director Muhammad indicated he had a two-hour telephone conversation with Director Lewis. Following, Director Lewis stated said discussion did not occur wherein Director Muhammad stated Director Lewis called him and Director Lewis indicated she returned Director Muhammad’s call. Director Lewis then asked Attorney French if Director Muhammad had indicated she agreed with him and Attorney French said he believes this would be up to the Board to decide on today. Following, Director Muhammad said the aforementioned telephone conversation lasted two (2) hours but it was not about the Contract Compliance Program. Director Lewis then asked how said program was included in the new agreement. Director Muhammad said he sent an email to all of the directors prior to the Board voting to move the referenced funds for said program and pointed out that he had also talked with the General Manager. He said in his

email he requested that the Board considers the attorneys and independent engineer to administer said program because said entities report to the Board. Director Muhammad added he could easily see how this would be included in the new agreement. Following, Director Lewis said she believes the General Manager and the Assistant General Managers would be more knowledgeable about said program wherein Director Muhammad disagreed. Director McKie reminded Director Lewis of the Board's discussion concerning said program at the November 10<sup>th</sup> Board Meeting and he pointed out none of the \$2,000,000.00 would be spent on any programs until the Board votes on it and designates some direction. He also pointed out that Attorney French would not spend said amount wherein Director Lewis stated said attorneys would have the right to say who would be hired. Following, Director McKie said the Board would have to set up the Contract Compliance Program. He said the Board would be made aware of some of the things that take place but it would not know everything that happens, pointing out this is why said attorneys' firm would administer the above-mentioned program. Following, Director Muhammad said the Board's attorneys would ensure the general contractor is not just including a certain percentage on the form relative to the sub-contractor. Following, Director Lewis said she received an email from the General Manager last night that was also sent to the other directors. She asked the General Manager what said attorneys would do differently handling the Contract Compliance Program since it appears the Board is presently doing everything that the attorneys would do. Director Lewis said she believes the Board would be wasting \$2,000,000.00 of ratepayers' money. Further, Director Lewis commented that Director Muhammad was just recently elected to the Board and indicated he places everything on the agenda without taking it through the proper channels. Director Muhammad stated he does this because he has three (3) votes wherein Director Lewis remarked that Director Muhammad discusses Board business outside of regular Board meetings and gets the required votes prior to said meetings. Following, Director Lewis said it is apparent that she is the only Board member who does not know the details relative to such matter and she pointed out Director Munchus is absent from today's meeting and could not voice his opinion. Subsequently, she said the manner in which Director Muhammad got the three (3) votes is questionable.

Following, a copy of the guidelines for the Historically Underutilized Business (HUB) program was distributed to the directors. Subsequently, the General Manager stated for the record the Historically Underutilized Business (HUB) program was approved and updated in 2015. He said since then senior executive management, the Engineering, System Development and Purchasing Departments have complied with guidelines established by said program. Following, the General Manager said the memo that he sent to the directors yesterday indicated staff is complying with all rules in the referenced program with the exception of verifying and certifying the amount contractors are paying to sub-contractors and minority vendors. He stated said program does not require staff to certify the HUB contractors wherein staff relies on about 10 or 12 organizations to verify the minority vendors. Following, the General Manager said staff could easily verify amounts paid to HUB contractors, pointing out he had talked with managers in the above-mentioned departments. He said the general contractors must complete a form certifying they correctly paid the minority vendors after projects are completed. Subsequently, the General Manager said the verification process is simple and involves sending a letter to the minority contractors wherein said contractors would send staff confirmation that they were paid accurately.

Next, a discussion ensued relative to the terms of the attorneys' new agreement regarding the reduction in the firm's Professional Liability Insurance and General Liability Insurance by \$1,000,000.00 and the Automobile Liability Insurance was eliminated. Attorney French indicated that he had a conversation with the General Manager concerning the Automobile Liability Insurance. He said the Board's attorneys do not transport employees or Board members in their automobiles, pointing out such language is applicable to other vendors and indicated it has nothing to do with attorneys having automobile coverage. He also said the certificate of coverage for their firm's new umbrella policy is appropriate to the total coverage of \$4,000,000.00 they have for malpractice insurance. In response to



Director Lewis' inquiry as to why the term "supermajority" was included in the new agreement, Attorney French stated said term was taken from the General Manager's employment agreement. Following, Director Lewis pointed out that the General Manager is an employee and not a contractor wherein Director McKie said the General Manager is a contracted employee. Subsequently, a discussion followed relative to a comparison of the General Manager's company benefits to a Board contractor having no benefits. Following, Director Lewis pointed out that the General Manager has full company benefits whereas Attorney French does not, noting said attorney should be listed in the same manner as other Board contractors. In response to questions from Director Lewis relative to why he used language from the General Manager's said agreement, and if the firm's new agreement contained additional language from said manager's agreement, Attorney French stated the General Manager's agreement is one (1) of several that he reviewed and used language from, and he indicated the abovementioned verbiage is all that he used from the General Manager's employment agreement.

Following, Director Muhammad commented on House Bill 647 which expanded the Board, stating he was firmly opposed to such an expansion. He stated that he is determined to protect assets of the citizens of Birmingham who purchased the Water Works from a private company for \$20 million in 1950 and also purchased Inland Lake in 1939. Director Muhammad said in 1950 the people of Birmingham had a \$20 million bond to purchase the Water Works from a private company which was not set up by the legislature. Director Muhammad said when the Mayor Council Act was passed it gave some of the appointing powers of the council to the mayor, pointing out politically, it appears there is an attempt to take over the majority of the Board from the city council and the citizens of Birmingham. Following, Director Muhammad said the Water Works' assets must be protected wherein the Board has to make some moves in case said rumor of an attempt to refigure the current Board is realized. Following, Director Lewis asked Director Muhammad what does he believes giving the new agreement to Attorney French and his firm would protect the Board from. Following, Director Muhammad said he believes the Board has extenuating political circumstances such as legal cases that are happening wherein Director Lewis asked him if the Board is relinquishing power to its attorneys for this reason. Director Muhammad said he thinks handing over power to the attorneys would stabilize the Board's situation wherein Director Lewis asked him how this would be possible since the directors are the Board. Director Muhammad explained he believes this would steady the Board's position because if the overthrow takes place politically the mayor would have two (2) appointees and there would be three (3) outside appointees. Following, Director Lewis said she thinks the directors are intelligent to make the right decisions, she asked what would cause the Board to set a precedent to give its power to an attorney out of some fear it has instead of working through a process. Director Lewis said during her years on the Board, she has never witnessed the manner in which decisions are being made lately, pointing out she realizes changes happen and indicated she never thought she would see board members turning their power over to an attorney. Subsequently, Director Lewis pointed out the previous attorneys did not control the Board.

Following, a discussion ensued relative to the process in reviewing consultants' agreements and the former's attorneys' agreement with the Board. Director Muhammad asked the General Manager if the Board's legal fees for the previous attorneys were over budgeted and if the Board is spending more in said fees for its current attorneys. The General Manager replied legal fees for 2015 totaled \$1,250,000.00 and pointed out approximately \$1.6 million would be spent in 2016. Director Muhammad asked if the Board is paying Fuston Petway & French more than it was paying Waldrep Stewart & Kendrick and the General Manager responded no. He added that the cost for the four (4) or five (5) additional attorneys the Board hired this year would put the total in excess of the amount that was paid to the Board's former attorneys. The General Manager stated legal fees are overspent for 2016, pointing out the budget for said fees was increased to \$1.6 million because of the expected excess. Following Director Muhammad said the Board hired additional attorneys to work on two (2) separate cases wherein the Board is paying the current attorneys less than it paid the previous attorneys. Subsequently, the General Manager said the Board's

legal fees for 2016 are over budget. In response to Director Lewis' inquiry as to whether they anticipate hiring another attorney, Director Muhammad said he is not aware of such. Director McKie asked if the issues the Board spent the extra legal fees on in 2016 were not present in 2015 such as the bond circumstances and the hearing last week. The General Manager replied no because legal fees for bond issues are taken from bond issuance monies, pointing out said issues were not charged to the budget.

Subsequently, Chairman Mims 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. Kevin B. McKie and seconded by Mr. William R. Muhammad, that the Board hereby approves an agreement with Fuston, Petway & French, LLP, to provide general legal services, effective November 22, 2016 for a three-year period; and authorize the Chairman to accept the agreement. Resolution No. 7349 is hereby adopted by Directors Mims, McKie and Muhammad; Director Lewis opposed.”

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After adoption of the above resolution, Director Lewis asked to go on record as opposing the three-year agreement with Fuston, Petway & French, LLP. She also asked if said firm would increase its Professional Liability Insurance and General Liability Insurance back to the original amount of \$5,000,000.00 because the Board is losing \$1,000,000.00 in coverage, and to remove “supermajority” from his agreement. Following, Director Lewis said the other directors had their questions answered and if she had been included in a committee meeting, the discussion concerning the referenced agreement would not be necessary now. Chairman Mims stated that Director Lewis refused to attend committee meetings and also said she did not want to be on any committees. Following, Director Lewis pointed out she did not refuse to attend said meetings and indicated she did say she did not want to be a part of any committee. Director Lewis stated said records would reflect she has attended all committee meetings. Director Lewis said she wanted to be afforded the same courtesy of being asked to serve on a committee that was extended to the other directors. In response to Director Lewis' questions whether the above-mentioned insurance would be increased and if the term “supermajority” would be removed from the new agreement, Attorney French responded in the negative. Subsequently, Director Lewis said as she understands said law firm plans to hire someone from the county and she asked to be informed when this takes place. Following, Director Lewis commented there needs to be a full investigation into the Birmingham Water Works Board due to ethics violations and other things that should not be happening. Director Lewis stated that they were corrupt at this point.

Next, the Board was asked to approve an emergency water purchase agreement with the Leeds Water Works as set forth in agenda item 7, and to authorize the General Manager and/or the Assistant General Manager to execute said agreement. The General Manager explained that the referenced agreement is similar to agreements the Board has with Shelby County and the City of Irondale Water Department. He indicated the Board would pay Leeds Water Works twice its normal rate, pointing out a site had been found close to Lake Purdy wherein water would be piped from Shepherd's Branch directly into said lake. Following, Director McKie inquired as to the amount of water staff expects to retrieve from said location. Assistant General Manager Sonny Jones said the Leeds Water Works has offered to sell the Birmingham Water Works Board finished and raw water. He said the Board's finished water rate is twice the Leeds Water Works' rate wherein the water would come from a hydrant and generate about 250,000 gallons per day. Following, Assistant General Manager Sonny Jones said the water would come from a well that the Leeds Water Works is not using and it would be put into a creek that would run into Lake Purdy. He noted cost for the referenced water would be at the Board's existing raw water rate of \$1,195.00 per millions of gallons. Assistant General Manager Sonny Jones responded to various

questions from Director McKie relative to the volume of water staff expects from this site, if the potable water is well water, and if staff would have to treat this water again. Assistant General Manager Sonny Jones stated about 800,000 gallons per day are expected from this site. He pointed out, however, that staff needs to open the well and test the water for quality and quantity before it is turned on. Following, he stated the potable water would come from the Leeds Water Works' distribution lines wherein it is good water to drink. Assistant General Manager Sonny Jones said the quickest way for staff to handle this process is to pump the water into Lake Purdy and then pull it from there. He said the water would have to be retreated because it would be mixed with water that is already in said lake. After discussion, the General Manager said staff recommends approval of the referenced item. 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. Kevin B. McKie and seconded by Mr. William R. Muhammad, that the Board hereby approves and authorizes the General Manager and/or the Assistant General Manager to execute an emergency water purchase agreement with Leeds Water Works to purchase water during emergency situations. Resolution No. 7350 is hereby adopted by unanimous vote.”

\* \* \* \* \*

Following, the General Manager recognized Business Systems/Transformation Manager Barry Williams to update the Board on the SAP implementation. Following, Mr. Williams reported the CRB implementation was updated on November 15, 2016. He stated with a few anticipated minor issues said implementation went better than expected. Mr. Williams said the major issue was customers not being able to access the system for online billing wherein staff is working with Utegration Incorporated and Paymentus in trying to address those concerns while registering customers for new access to the system update. Following, Mr. Williams said most of the problems have been resolved and staff is walking customers through the activation process. Mr. Williams said when the process was redone the first password was 40 characters wherein staff has decreased this to a six (6) character field to allow easier access to the system. Following, Mr. Williams pointed out that staff's key focus is getting customers online and getting them to accept the new system. Subsequently, Mr. Williams said staff expected the data to transmit in the manner it did and is satisfied and excited with the progress to date.

Next, the General Manager asked the Board to hear division reports. In the absence of Assistant General Manager Darryl Jones, the General Manager presented the Operations and Technical Services Division Report, as set forth in agenda item 8.1, for October 2016 in a PowerPoint presentation. A copy is on file in today's Board Meeting book. He reported on comparisons of the monthly finished water pumpage, pointing out pumpage for the Shades Mountain Filter Plant is decreasing wherein staff is trying to do less as possible with said plant and Lake Purdy. The General Manager reported on the daily raw water pumpage, noting less water is being taken from the Cahaba River and Lake Purdy. The General Manager noted that staff is pushing additional water from the Western, Carson and Putnam Filter Plants over the mountain in order to reduce the amount of water from the Shades Mountain Filter Plant. Following, the General Manager reported the cumulative raw water pumpage year-to-date is slightly less than it was in 2015 and the average cumulative rainfall is about 17 inches below normal in the Cahaba-Lake Purdy area. He also reported the Inland Lake Storage is in good shape and that the safe yield line has been crossed wherein it is now flat. Following, the General Manager informed the directors that the well drilled this week would be encased and the pump would be installed wherein senior executive management hopes to have the referenced well at the mine on board by next week. The General Manager reviewed a comparison of the 2015 versus the 2016 delivery for the last 30 days of finished water; reported raw water sales varying for 2016; reported USX Corporation's declining water consumption with no expected increase in usage for 2016. Following, he reported the U. S. Drought Monitor dated

November 8, 2016 shows there is an exceptional drought in the Lake Purdy area. The General Manager reported power costs are \$606,000.00 under budget year-to-date, pointing out said costs are constantly monitored by Assistant General Manager Darryl Jones; and reported chemical costs are \$165,000.00 under budget year-to-date.

Following, Mr. Jerry Jones of ARCADIS US, Inc. was recognized to give an update on the drought. The General Manager noted that Mr. Jones and others at his company have been working with staff concerning the current very dry conditions. Following, Mr. Jones directed the Board's attention to the last page of his drought status update handout that had been distributed to them for their review and a copy is on file in today's Board Meeting book. He commented that staff alleviated a lot of demand from the Shades Mountain Filter Plant and Lake Purdy by bringing water in from the north and pushing it to the south. Mr. Jones said he believes the Board would get through the drought as long as present demands are sustained in the southern portion of the system. Following, he said staff has gone from pulling in excess of 30 millions of gallons per day (mgd) from Lake Purdy to about ten (10) mgd. Mr. Jones said they believe the round connection and additional things would help to rebuild the Shades Mountain Filter Plant, independent of rainfall. Mr. Jones said senior executive management is currently looking at a lot of options in trying to bring additional water to the south during the drought. He said they believe the referenced connection would be the most beneficial because staff would be able to get more water downtown from the Western Filter Plant, pointing out all of the capacity does not exist now because there are not sufficient connections. Following, Mr. Jones noted that the decrease in customer demand is obvious, due in part to media coverage and the announcement of the Stage Four (4) extreme drought emergency on November 4, 2016 that would involve water restrictions and surcharges for excessive water usage. Subsequently, Mr. Jones recommended that the Board reconsiders looking long-term on how to deal with droughts in order to meet long-term demands and to reconstitute the Water Resources Committee, pointing out there has been some conversation with the University of North Alabama relative to understanding what is happening with LA Nina and the recurrences. Mr. Jones said on a positive note, there is a lot of national and international technology and they are trying to understand the kinds of cycles they would be facing in five-year or ten-year cycles wherein this would be combined with other alternatives. Director Muhammad said he did not understand Mr. Jones' reference to reconstituting the Water Resources Committee and asked for clarification. Following, Mr. Jones stated the Board had a Water Resources Committee prior to the 2008 or 2009 drought wherein said committee looked at long-term water resources concerning how the Board wants to supply customers across its service area for the next 50 years. Mr. Jones pointed out that the majority of people do not realize such projects take more than a decade to get permitted and financing must be secured. Subsequently, he said a Water Resources report was developed in 2011. Following, Mr. Jones said currently Inland Lake is normal and the rivers are in good shape, and he pointed out each day without rain would add pressure on the basins.

Following, Director Muhammad stated he would like to talk with Mr. Jones, the General Manager and Assistant General Managers Sonny Jones and Darryl Jones. He said these are strange times wherein he asked Assistant General Manager Sonny Jones what kind of strategy senior executive management could come up with in January when the lakes are overflowing. Assistant General Manager Sonny Jones said Mr. Jerry Jones, Assistant General Manager Darryl Jones, Chief Engineer Ben Sorrell and he had discussed this and decided the answer is off stream storage. He said the shortage is in the Cahaba River basin and he noted that in the winter during the rainy season water spills over the diversion dam after the lakes are filled. Following, Assistant General Manager Sonny Jones said it would take money and time wherein staff needs to create a place to put the excess water, pointing out some water has to over flow to support life below the dam.

Following, Assistant General Manager Sonny Jones said senior executive management has identified a second coal mine on the Board's property, wherein coal mines are being developed with the

concept of being a permanent solution. He noted coal mines only have a finite amount of water wherein it takes a very long time for them to refill once the water is removed. Following, Assistant General Manager Sonny Jones said staff could let the well fill up naturally or pump from the river into the mine during the rainy season, pointing out these are some options that are being explored. Director Muhammad commented that he realizes engineers do not like outdated methods and he asked if they had considered identifying and digging additional wells. Assistant General Manager Sonny Jones said this could be done but they had not discussed it in detail. He said generally, the nation is over mining its ground water supplies, pointing out the ground table in the United States has plunged over the past 50 years.. Following, Assistant General Manager Sonny Jones said the Board has some wells. He pointed out all of the wells behind Lake Purdy produce six (6) mgd for 90 days then staff cuts them off because they would dry out. Subsequently, Assistant General Manager Sonny Jones said some water could be retrieved from wells but it would have to be a specific case. The General Manager said statistics show over 80% of the water that flows downstream from all rivers in the State of Alabama end up in the gulf, pointing out said state does not have a lot of off stream storage. The General Manager said most of the other water systems are currently living off of releases upstream and pointed out there is nothing upstream in the Lake Purdy/Cahaba Watershed to release water, citing this as being one (1) of the issues. Director Lewis asked where Assistant General Manager Sonny Jones was talking about storing water in lieu of tanks and the General Manager said Assistant General Manager Sonny Jones was referring to a new Lake Purdy or an underground cavern. Following, Mr. Jerry Jones said even with the drought there is plenty of water around Inland Lake, Sipsey and Mulberry. He said if it were not for Lake Purdy being the smallest source of supply and the largest demand, the Board would probably not be in Stage Four (4) of the drought if staff had a more efficient method of getting the water from north to south. Subsequently, Mr. Jones said at the Board's scheduled request they would like to have a detailed discussion about water resources. He said a lot of options were previously laid out but there is only so much that can be done now because they are not physically connected. Following, the General Manager said staff would provide the Board with another update later.

Next, Assistant General Manager Michael Johnson was recognized to present the Finance and Administration Division's Operating & Statistical Report (O&S), as set forth in agenda item 8.2 for October 2016 in a PowerPoint presentation. A copy is on file in today's Board Meeting book. He reported on the following: the number of active customers; the operating net revenue available for debt service and PAYGO; the operating expenses available for debt service and PAYGO; the net operating revenue available for debt service and PAYGO; the total operating net revenues available for debt service year-to-date; the total operating expenses; and the total net operating revenue year-to-date; the large O&M variances wherein employee health cost, contractor charges, paving charges, power costs, chemical costs; and labor costs are under budget year-to-date, wherein overtime is over budget by \$404,109.00, pointing out, the majority of said time is related to the SAP project and the reason for the buyback and leave. Following, Assistant General Manager Michael Johnson reported the reserve fund balance as of October 31, 2016 is \$120,005,197.00. He pointed out that \$2,000,000.00 was transferred from the Economic Development Fund and allocated to the Contract Compliance Program based on Resolution No. 7337 that was adopted by the Board on November 10, 2016. Assistant General Manager Michael Johnson reported the reserve fund target balance is \$51,464,782.64. Following, Assistant General Manager Michael Johnson reported total HUB participation through October 2016 is about 13.2%. He reviewed a graphical illustration of the EasyPay Customer Stats relative to the number of users for the IVR vs. Website, the e-Check vs. Credit/Debit cards, and the number of current e-Bill customers. Assistant General Manager Michael Johnson said the number of customers paying their bills through electronic means has increased over the years. He reported that as of November 18, 2016 there are 21,895 HomeServe customers with 33,039 active policies that include Water Service Line, Sewer Septic Line, Plumbing & Drainage, Cooling and Water Heater. In response to Director Muhammad's inquiry if the 13.2% HUB participation is for one (1) month, Assistant General Manager Michael Johnson stated said percentage is year-to-date.

Director Muhammad then asked if the remaining 30% HUB participation goal would be met in December wherein Assistant General Manager Michael Johnson stated said goal would not be reached in 2016 based on how it is trending.

Following, Assistant General Manager Sonny Jones was recognized to present the Engineering and Maintenance Division's Report (E&M), as set forth in agenda item 8.3 for October 2016 in a PowerPoint presentation. A copy is on file in today's Board Meeting book. He reported the Capital Improvement Plan (CIP) expenditures are at \$36,847,004.00 of the \$60,357,890.00 capital budget. He reviewed the Capital Project highlights regarding the Inland Marina, SAP 2.0, and the Western Filter Plant Electrical Upgrade. Assistant General Manager Sonny Jones gave an update on the System Development Department's main replacement projects and noted staff has received bids on 9,498 linear feet of pipe that is ready to be installed. Assistant General Manager Sonny Jones reviewed the Distribution Department highlights that included leak orders completed; hydrants repaired or replaced; and outstanding leak orders, pointing out there are 249 such orders. He explained that although leaks increase annually around this time of year the drought has worsened them wherein they would not decrease during the winter. Following, Assistant General Manager Sonny Jones reported outstanding leaks have contributed to overtime. He said 15 in-house crews are constantly working extremely hard to repair the leaks, in addition to three (3) outside construction crews. Following, Assistant General Manager Sonny Jones reported pressure washing is only done under the most extreme conditions if streets need to be cleaned. He called the directors' attention to a letter he received from a customer that he had distributed for their review. A copy is on file in today's Board Meeting book. He stated the referenced letter commended District Supervisor Hayden Farness and his crew, Utility Worker II Anton Whitt; Utility Worker I Cornelious Tolbert; and Distribution Maintenance Worker Rhashard Corbett for doing a thorough job in repairing a leak in the Liberty Park area.

Next, the General Manager mentioned that senior executive management is updating the Governor's office regularly regarding the drought. He stated said management would try and do this on Monday, Wednesday, and Friday wherein the directors would also be provided additional information. Subsequently, the General Manager wished the meeting body a happy Thanksgiving holidays.

As there was no further business before the Board, a motion was duly made and seconded, and the meeting adjourned at 10:33 a.m.

\_\_\_\_\_/s/\_\_\_\_\_  
Ronald A. Mims  
Chairman/President

Attest:

\_\_\_\_\_/s/\_\_\_\_\_  
George Munchus  
Secretary-Treasurer