



**DISTRICT OF COLUMBIA
WATER AND SEWER AUTHORITY**

Board of Directors

Governance Committee

Wednesday, September 8, 2021

9:00 a.m.

Microsoft Teams

Join on your computer or mobile app

[Click here to join the meeting](#)

Or call in (audio only)

[+1 202-753-6714,,507980134#](#)

Phone Conference ID: 507 980 134#

AGENDA

- 1. Call to Order** **Lavinia Baxter, Chairperson**
- 2. Roll Call** **Linda Manley, Board Secretary**
- 3. FY21 Certified Business Utilization Report**..... **Korey Gray, Compliance Officer**
- 4. Blue Drop FY 21 Quarter 3 Update** **Thomas Kuczynski, President Blue Drop**
- 5. Amendment to By-Laws** **Gregory Hope, Deputy General Counsel**
 - **ACTION ITEM: Amend Bylaws to transfer responsibility for providing recommendation to the Board regarding the “terms, requirements and conditions of employment and performance review for the General Manager” from the Human Resources & Labor Relations Committee to the Executive Committee.**
- 6. Other Business** **Lavinia Baxter, Chairperson**
- 7. Executive Session *** **Lavinia Baxter, Chairperson**
- 8. Adjournment** **Lavinia Baxter, Chairperson**

* The DC Water Board of Directors may go into executive session at this meeting pursuant to the District of Columbia Open Meetings Act of 2010, if such action is approved by a majority vote of the Board members who constitute a quorum to discuss: matters prohibited from public disclosure pursuant to a court order or law under D.C. Official Code § 2-575(b)(1); contract negotiations under D.C. Official Code § 2-575(b)(2); legal, confidential or privileged matters under D.C. Official Code § 2-575(b)(4)(A); collective bargaining negotiations under D.C. Official Code § 2-575(b)(5); facility security under D.C. Official Code § 2-575(b)(8); disciplinary matters under D.C. Official Code § 2-575(b)(9); personnel matters under D.C. Official Code § 2-575(b)(10); proprietary matters under D.C. Official Code § 2-575(b)(11); train and develop members of a public body and staff under D.C. Official Codes § 2-575(b)(12); decision in an adjudication action under D.C. Official Code § 2-575(b)(13); civil or criminal matters where disclosure to the public may harm the investigation under D.C. Official Code § 2-575(b)(14), and other matters provided in the Act.



David L. Gadis, CEO and General Manager
DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

A photograph of a large, modern, curved glass building with a walkway over water. The building has a distinctive curved facade and is situated on a pier or walkway over a body of water. The sky is blue with some light clouds. The text is overlaid on the image.

**FY 21 Program Update
Business Development Plan Implementation
Presented to the
Governance Committee
Lavinia Baxter, Chairperson
September 8, 2021**



Program Administration

GOALS

DC Water is committed to promoting economic and business development in the District of Columbia and the local region it serves.

DC Water actively encourages and supports the participation of certified local businesses, local small business enterprises, and disadvantaged business enterprises in its contracting and procurement activities, at all tier levels.

Governing Documents

DC Water's Business Development Plan

- Originally adopted by the Board in 1999
- Most recently amended in June 2020
 - Modeled after the US Department of Transportation's DBE Program (Code of Federal Regulations 49 CFR Part 23 and 26)

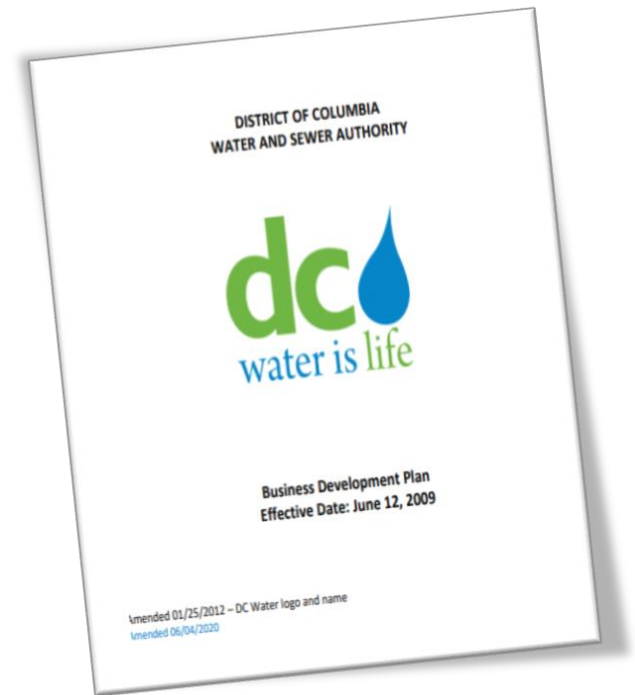
DC Water's DBE/WBE Standard Operating Procedures

- Originally developed in March 2017
- Amended in October 2020

Code of Federal Regulations

- For EPA and Federally Funded Projects
- Code of Federal Regulations 40 CFR Part 33

Procurement Provisions





Program Administration

Process Flow Of the Monitoring Process



- The DBE program requires that DC Water monitor every contract on which Certified Firm participation is claimed.
 - Regulations do not permit the monitoring of only a sample or percentage of contracts on which Certified Firms participate.



Program Administration



Pre-Award – Good Faith Efforts Review

A contractor must make **good faith efforts** to meet the DBE contract goal by sincere and aggressive efforts. (not merely pro forma)

- Pass or Fail Requirement



Did the Prime Exercise and Document adequate good faith efforts?
Submission of the [GFE Checklist](#) (*Sample in Attachments Section, Slide 21*) and Support Documents

- Did Bidder/Offeror submit required information?
- Solicited through all reasonable means?
- Broke apart portions of work to be performed by DBEs?
- Provided information on plans and specs?
- Negotiated in good faith with DBEs?
- Did not rely solely on price?
- Did no reject DBE as unqualified without sound reason?
- Asked for advice from minority or women organizations?
- Did other bidders/offerors meet the goal?

Primes must document every aspect of their engagement.

- GFE's must be verifiable
- Doing it is not enough
- Primes MUST be able to prove what was done



Program Administration



Pre-Award – Counting Certified Firms/ Commercially Useful Function Review

I. Did bidder provide an adequate Bidders List and include the following information?

- Name of firm
- Address of firm
- Firm's current certification status
- Confirmation of the Certified Firm's Commercially Useful function

II. **The only way a prime contractor can receive credit towards a utilization goal, is if the Certified Firms perform a commercially useful function.**

For the purposed of DC Water's Compliance Program, a firm demonstrates that it is performing a CUF when it is:

Responsible for the execution of the work of the contract or a distinct element of the work... by actually performing, managing, and supervising the work involved.

Five (5) elements are considered when determining whether a firm is performing a commercially useful function (Overview included in Attachments Section, Slide 19) .





Business Diversity and Inclusion Examples of Good Faith Efforts



□ Working with Strategic Partners

Effectively using services of available business organizations:

- Community organizations
- Contractors' groups
- DC Water's Business Diversity and Inclusion Program
- Federal Assistance offices
- Other organizations that provide services for recruitment and placement of DBE/WBEs

□ Identifying Portions of Work for DBEs/WBEs

- Unbundling - Break down contract into smaller economically feasible units to facilitate DBE participation
- Identify portions of the work that can be performed by subcontractors/DBEs
 - Do so even if some of this work is normally performed with Prime's own forces

□ Effective Information Sharing

- Must provide interested firms with timely information about the plans, specifications and requirements of the subcontract
- As documentation, consider providing print screens of company's website where plans are available



Business Diversity and Inclusion Advisory Council Update



Background

The DC Water Business Diversity and Inclusion Advisory Council was formed in March 2021 to provide guidance and recommendations to DC Water on matters concerning the development of strategies, policies and operational procedures to expand and improve recruitment, retention and contracting for certified firms in the user jurisdiction.

Purpose

- To provide independent advice and a diversity of viewpoints to DC Water Management concerning the Business Development Plan.
- To offer best practices concerning DC Water procurement processes.
- Propose to the Authority ways to continue effective and efficient long-term contractor engagement with improved outreach tools and techniques.
- Ensure that DC Water's procurement and supplier practices and partnerships are conducted equitably amongst the goods and services rendered by DC Water.

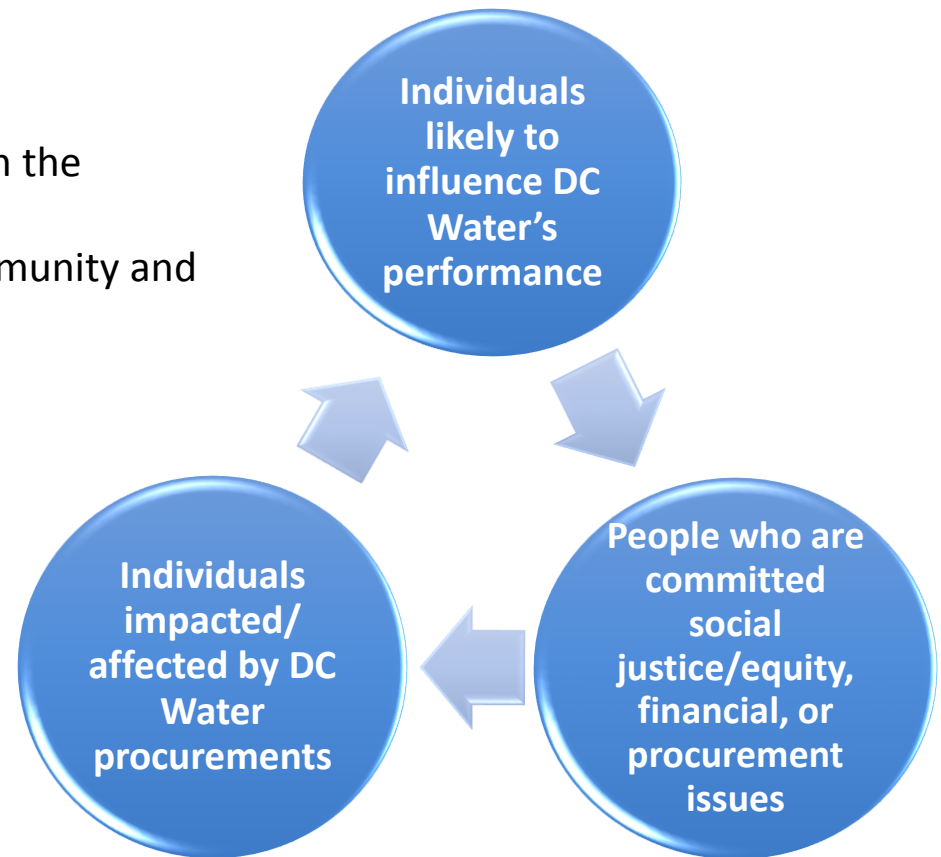


Membership

The Advisory Council is a membership of individual residents, representatives of trade and business associations, community organizations, with differing expertise, strengths, resources and relationships who share their diverse opinions and interests, review and discuss presentations, and develop recommendations in a structured process in support of DC Water.

Advisory Council Members:

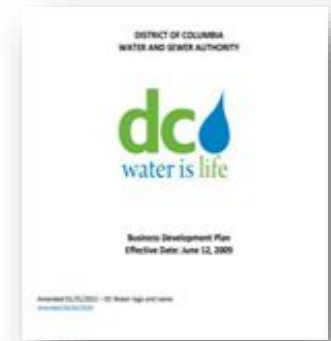
- > Are Volunteers that serve as ambassadors in the community.
- > Are selected to represent the business community and other impacted stakeholders.
- > Serve for two year appointments.
- > There is a maximum of 25 members.





Business Diversity an Inclusion Advisory Council

Areas of Focus



Suggesting Procurement Best Practices

- Removing Barriers
- Prompt Invoice Standards

Providing Education and Training Guidance and Support

- Good Faith Efforts

Engagement and Capacity Building

- Mentor Protégé Standards
- DC Water's Contractor College

Business Development Plan Review

- Bi-Annual
- Suggest Improvements

Annual Compliance Report

- Review Report

Contractor Recognitions

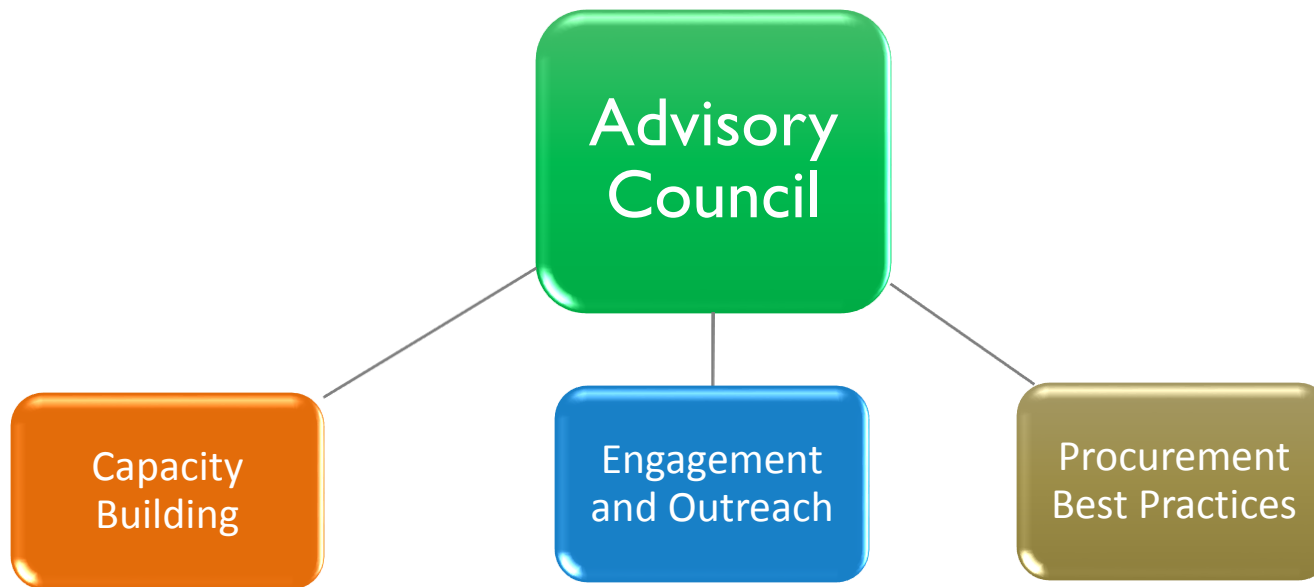
- Determine Awardees





Structure

The Advisory Council may be organized into subcommittees to enable a more thorough review of specific issues.





Business Diversity and Inclusion Certified Firm Achievement – How are we Doing?

FY 21 Highlights:

- All utilization goals exceeded for FY 21 new awards
- Over 80 certified firms participating
- 6 mentor/protégé relationships established

FY 21 New Awards

A/E (28% DBE Goal/ 4% WBE Goal)

- 2 New Awards
- Avg DBE Participation: 31%
 - Number of DBE's: 14
- Avg WBE Participation: 38%
 - Number of WBE's: 4
 - 1st Certified WBE Prime
- Total CBE's: 7

Construction (Non GI) (32% DBE Goal/ 6% WBE Goal)

- 8 New Awards
- Avg DBE Participation: 35%
 - Number of DBE's: 26
- Avg WBE Participation: 7.3%
 - Number of WBE's: 13
- Total CBE's: 12

Construction (GI) (50% Goal)

- 2 New Awards
- Avg CBE Participation: 60%
 - Number of CBE's: 5

Goods and Services (32% DBE Goal/ 6% WBE Goal)

- 9 New Awards
- Avg DBE Participation: 85%
 - Number of DBE's: 12
 - 8 DBE Primes
- Avg WBE Participation: 6%
 - Number of WBE's: 13
- Total CBE's: 11

Blue Drop

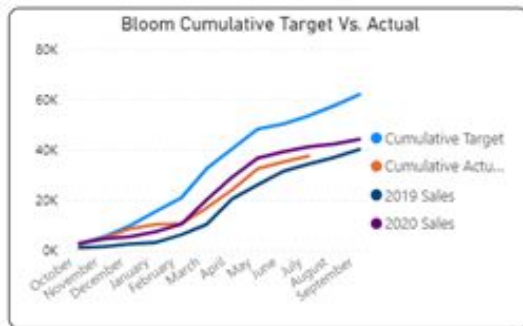
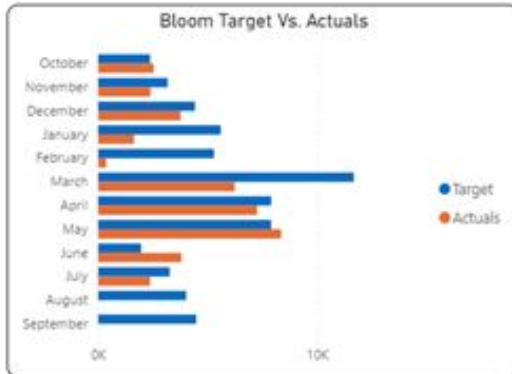
Governance Committee
Update – September 2021



Bloom Update

FY21 Bloom goal is 62,000 tons

FY21 goal is a 40% increase from FY20 actuals of 44,750 tons



- Total annual sales are projected at 44,000
- Sales from January through early March were severely impacted by extreme wet weather
- Recent Sierra Club article on PFAS in biosolids has resulted in some questions but no lost orders at this point
- NPR piece produced in July was positive and emphasized the need for science-based evidence to support any conclusions on the impact of PFAS in bio-solids
- On-target to meet FY21 savings target of \$2 million for Blue Plains
- Evaluating off-site storage options for Bloom to address supply/demand challenges



HQO Events

Interest in HQO Events remains extremely strong

- Monthly inquiries since April have averaged 50+
- Held 5 paid events since re-opening in June
- Held 2 non-profit events since re-opening in June
- 9 events are scheduled through the end of the calendar year
- Second wedding scheduled for September 2022
- 5 couples are reviewing contracts for weddings planned in 2022 and 2023



Other Revenue Update

Renewal Energy Credit Sales - FY2021 goal is \$1,000,000

- Collected \$1,066,451 in FY20
- Processed \$1.3 million in sales so far in FY21

Cell Towers - FY2021 goal is \$178,000.

- Collected \$130,000 in FY20
- Collected \$211,211 so far in FY21
- Working with T-Mobile on two other potential locations for cell towers at an estimated value of \$30,000 per site per year



Intellectual Property

- Completed re-negotiation of inDense agreement pending signature
- Made counter proposal to Ovivo for renewing the Digestivor Agreement
- Signed marketing agreement with Layermark to market DC Water mobile work management applications: Hydrant, Catch Basin & Valve applications
- Overall IP goal for FY21 is \$500,000 collected \$362,000 so far. Software IP sales have not materialized



Wendy's Wonderful World of Water

- Sold 250 copies
- Distributed about 200 free copies to local non-profits, classrooms and DC libraries
- DC Public Schools to use *Wendy, Where Does Our Wastewater Go?* as part of the 5th Grade Cornerstone Project in 2021
- City of Roseville, CA licensed Wendy for use
- Second addition of Wendy is in production
- Sold 50 items of branded merchandise
- Overall net sales of Blue Drop Shop were \$6,500
 - 10% being donated to SPLASH





Amendments to Board of Directors By-Laws

Governance Committee, September 8, 2021

District of Columbia Water and Sewer Authority



Blue Plains Advanced Wastewater Treatment Plant



Purpose

- 💧 **Amend Board of Director's By-Laws to:**
 - 1. Amend § 3.01(b) to include any other ways the public can attend a meeting to qualify as an open meeting as provided in D.C. Official Code 2-575(a) of the Open Meetings Amendment Act of 2010**
 - 2. Amend § 5.01(a)(i) and (v) to transfer the responsibility for making recommendations regarding “terms, requirements and conditions of employment and performance review for the General Manager” from the Human Resources & Labor Relations Committee to the Executive Committee**



Public Attendance – Pre COVID-19

- **In accordance with § 3.01(b) of the By-Laws and D.C. Official Code 2-575(a), a meeting is deemed open to the public if:**
 - 1. The public is permitted to be physically present;**
 - 2. The news media, as defined by § 16-4701, is permitted to be physically present; or**
 - 3. The meeting is televised.**



Public Attendance - During COVID-19

- During COVID-19, the D.C. Council enacted emergency and temporary legislation providing flexibility for public bodies to permit the public to attend meetings remotely to comply with the Open Meetings Act:

“During a period for which a public health emergency has been declared...the public body takes steps reasonably calculated to allow the public to view or hear the meeting while the meeting is taking place, or, if doing so is not technologically feasible, as soon as reasonably practicable thereafter.”

- On July 25, 2021, the Mayor ended the declaration of public health emergency, and the Council amended the Open Meetings law to extend the remote public access option that will end on November 5, 2021:

“During the period of time from March 11, 2020, until November 5, 2021...the public body takes steps reasonably calculated to allow the public to view or hear the meeting while the meeting is taking place, or, if doing so is not technologically feasible, as soon as reasonably practicable thereafter.”



Amendment to § 3.01(b)

- 💧 To ensure the Board's By-Laws are consistent with D.C. Code 2-575, and any future changes, § 3.01(b) is revised to incorporate by reference any changes in the law:

(b) Except as provided in § 3.04, all meetings shall be open to the public. A meeting shall be deemed open to the public if:

- The public is permitted to be physically present;**
- The news media, as defined by D.C. Official Code § 16-4701, is permitted to be present;**
- The meeting is televised; or**
- The meeting is held in a manner consistent with the requirements provided in D.C. Official Code 2-575(a).**



Amendment § 5.01(a)(i) and (v)

- 💧 The Board Chair has requested the transfer from the Human Resources & Labor Relations Committee to the Executive Committee, the responsibility for reviewing and making recommendations to the Board regarding the “terms, requirements and conditions of employment and performance review for the General Manager”
- 💧 § 5.01(a)(i) shall be amended to read:
 - (i) Executive Committee: Shall be composed of the Officers of the Board and shall meet at the direction of the Chairperson to: provide recommendations to the Board regarding Board organizational direction, strategic planning, and general affairs; nominate the First Vice-Chairperson and Second Vice-Chairperson as provided in § 4.01(b); ~~and~~ provide recommendations to the Chairperson for Committee chairmanship and membership; and provide recommendations to the Board regarding the terms, requirements and conditions of employment and performance review for the General Manager.



Amendment § 5.01(a) (v)

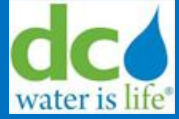
💧 § 5.01(a)(v) shall be amended to read:

(v) Human Resources and Labor Relations Committee: Shall make recommendations to the Board regarding actions required of or desired by the Board of Directors with respect to the terms, requirements and conditions of employment for all employees **including excluding the General Manager, to include, by way of example and not limitation, matters involving compensation, pension and other benefits, awards and collective bargaining agreements.**



Recommendation

Request Governance Committee recommendation to the Board to amend the Board's By-Laws as provided in the Action Item



Questions?

Action Item: Amend Bylaws to transfer responsibility for providing recommendation to the Board regarding the “terms, requirements and conditions of employment and performance review for the General Manager” from the Human Resources & Labor Relations Committee to the Executive Committee

**BY-LAWS
DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY**

**Adopted – October 17, 1996; Resolution 96-11
Amended – February 4, 1999; Resolution 99-10
Amended – February 1, 2001; Resolution 01-16
Amended – September 12, 2002; Resolution 02-75
Amended – December 4, 2003; Resolution 03-86
Amended – July 5, 2007; Resolution 07-64
Amended – October 2, 2008; Resolution 08-87
Amended – April 1, 2010; Resolution 10-42
Amended – October 7, 2010; Resolution 10-100
Amended – December 2, 2010; Resolution 10-115
Amended – April 7, 2011; Resolution 11-49
Amended – December 5, 2013; Resolution 13-112
Amended – February 2, 2017; Resolution 17-11
Amended – September 5, 2019; Resolution 19-47
Amended – April 2, 2020; Resolution 20-30
Proposed Amendment – October 7, 2021; Resolution 21-XX**

**ARTICLE I
General**

These By-Laws and the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996 (the “Act”), as the Act shall be amended from time to time, govern the function and operation of the District of Columbia Water and Sewer Authority (the “Authority”) and in the event of any conflict between these By-Laws and the Act, the Act shall control to the extent of the conflict. Terms defined in the Act shall have the same meaning when used in these By-Laws. References in these By-Laws to the Act, or any provision thereof, shall include a reference to any amendment to the Act which takes effect after the adoption of these By-Laws.

**ARTICLE II
Board of Directors**

§ 2.01 Composition

(a) The Board of Directors of the Authority (the “Board”) shall consist of eleven (11) principal Board members (“principal members”) and eleven (11) alternate Board members (“alternate members”).

(b) Alternate members may participate in discussion at Board meetings, at the Chairperson's discretion, but may vote at Board meetings only when their corresponding principal Board member is absent. An alternate member permitted by this subsection to vote at a meeting shall do so as a representative of their corresponding principal member except that if the principal's position is vacant the alternate shall vote in her or his own right.

(c) Principal members shall endeavor to attend all Board meetings and meetings of those Committees upon which they serve.

(d) Alternate members shall attend any meeting which their corresponding principal is required to, but cannot attend. Alternates shall either attend all other meetings or familiarize themselves with the discussions and determination made at such meetings.

(e) Alternate members may be appointed by the Chairperson to the Committees established by the Board and may fully participate in Committee functions.

§ 2.02 Duties

The Board shall develop policies for the management, maintenance, and operation of water distribution and sewage collection and treatment, disposal systems and other devices and facilities under the control of the Authority, and shall perform such other duties as are specified in or otherwise required by the Act and these By-Laws.

§ 2.03 Removal, Suspension, and Termination

(a) The Board may recommend that the Mayor remove, suspend, or terminate a principal or alternate member for misconduct or neglect of duty. The Mayor may remove a principal or alternate pursuant to section 204(g) of the Act (D.C. Official Code § 34-2202.04(a)(4)(g)).

(b) The Board may recommend that the Mayor remove, suspend, or terminate a principal or alternate member for misconduct if the Board finds that the member or alternate committed any act involving moral turpitude. The Mayor may remove a principal or alternate pursuant to section 204(g) of the Act (D.C. Official Code § 34-2202.04(a)(4)(g)).

(c) The Board may recommend that the Mayor remove, suspend, or terminate a principal or alternate member for neglect of duty if the Board finds that:

- (i) The principal or alternate member committed any act or omission which constitutes a breach of the Board member's or alternate's fiduciary duty to the Board or the Authority;

- (ii) A principal member failed to attend two or more Board meetings, or three or more meetings of a Committee to which such member is appointed, within a twelve-month period, without providing a business or personal reason which the Board determines is legitimate; or
- (iii) An alternate member, having received notice from his or her corresponding principal member of that member's inability to attend a meeting (as required by § 3.05 (c)), failed to attend two or more such Board meetings, or three or more Committee meetings, within a twelve-month period, without providing a business or personal reason which the Board determines is legitimate.

(d) A principal or alternate member who is indicted for the commission of a felony shall be automatically suspended from serving on the Board. Upon a final determination of guilt, the term of the principal or alternate member shall be automatically terminated. Upon a final determination of innocence, the Mayor may reinstate the Board member.

§ 2.04 Resignation

Any principal or alternate member may resign by giving notice of resignation to the Mayor and a copy of the notice to the Secretary to the Board. A non-District member shall also notify the official authorized to recommend a successor. The member's resignation shall take effect on the date specified in the notice.

§ 2.05 Compensation

Principal and alternate members of the Board of Directors shall be compensated and reimbursed for expenses as provided in the Act and in accordance with the Authority's reimbursement procedures for executive officers.

ARTICLE III Meetings

§ 3.01 Meetings to be Open to Public; Availability of Records

(a) For purposes of these By-Laws, except as provided in subsection (g), the term "meeting" shall be defined as a gathering of a quorum of the members of the Board, including hearings and roundtables, whether formal or informal, regular, closed executive session, or emergency, at which the members of the Board during such gathering consider, conduct, or advise on Authority business, including gathering of information, taking testimony, discussing, deliberating, recommending, and voting, regardless whether the meeting is held in person, by telephone, electronically, or by other means of communication. The term "meeting" may also include part or all of a retreat. The term

“meeting” shall not include a chance or social gathering, press conference, or training session.

(b) Except as provided in § 3.04, all meetings shall be open to the public. A meeting shall be deemed open to the public if:

- (i) The public is permitted to be physically present;
- (ii) ~~(i)~~ The news media, as defined by D.C. Official Code § 16-4701, is permitted to be present;~~or~~
- (iii) The meeting is televised; or
- ~~(iii)~~(iv) The meeting is held in a manner consistent with the requirements provided in D.C. Official Code 2-575(a).

(c) All meeting, whether open or closed, shall be recorded by electronic means; provided, that if a recording is not feasible, detailed minutes of the meeting shall be kept.

(d) Copies of records, including a written transcript or transcription shall be made available to the public, at a reasonable cost, upon request in accordance with the following schedule, provided that a record, or a portion of a record, may be withheld under the standards established for closed executive session meetings as provided in § 3.04:

- (i) A copy of the approved minutes of a meeting shall be made available for public inspection as soon as practicable, but no later than three (3) business days after the meeting at which the minutes were approved.
- (ii) A copy of the full record, including any recording or transcript, shall be made available for public inspection as soon as practicable, but not later than seven (7) business days after the meeting.

(e) A meeting may be held by video conference, telephone conference, or other electronic means, provided that:

- (i) Reasonable arrangements are made to accommodate the public’s right to attend the meeting;
- (ii) The meeting is recorded; and
- (iii) All votes are taken by roll call.

(f) A meeting held by electronic means shall comply with all of the requirements of these By-Laws.

(g) E-mail exchanges among principal or alternate members and staff shall not constitute an electronic meeting.

§ 3.02 Regular Meetings

Regular meetings of the Board shall be held on the first Thursday of each month, or if such day is a legal holiday in the District of Columbia, then on the next weekday following such day unless an alternate date is determined to be appropriate by the Chairperson. All meetings shall be held at the District of Columbia Water and Sewer Authority Headquarters Building, 1385 Canal Street, S.E., Washington, D.C. 20003, or as otherwise specified in the notice of such meeting.

§ 3.03 Emergency Meetings

(a) Emergency meetings of the Board to address an urgent matter may be called by the Chairperson on his or her own initiative, or upon the written request of not less than three members of the Board entitled to vote on the matter or matters to be considered at the emergency meeting (which request shall specify such proposed matter or matters and shall be delivered to the Chairperson and the Secretary to the Board).

(b) When an emergency meeting is convened, the Chairperson shall open the meeting with a statement explaining the subject of the meeting, the nature of the emergency and how public notice was provided.

§ 3.04 Closed (Executive Session) Meetings

(a) The Board or Committee may only close a meeting or portion of a meeting for an executive session for the following reasons:

- (i) A law or court order requires that a particular matter or proceeding not be public;
- (ii) To discuss, establish, or instruct the Authority's staff or negotiating agents concerning the position to be taken in negotiating the price and other material terms of a contract, including an employment contract, if an open meeting would adversely affect the bargaining position or negotiating strategy of the Authority;
- (iii) To discuss, establish, or instruct the Authority's staff or negotiating agents concerning the position to be taken in negotiating incentives relating to the location or expansion of industries or other businesses or business activities in the District;
- (iv) To consult with the Executive Vice-President, Legal Affairs or other attorney to obtain legal advice and to preserve the attorney-client privilege between an attorney and the Authority, or to approve

settlement agreements; provided, that, upon request, the Authority may decide to waive the privilege. A meeting shall not be closed that would otherwise be open merely because an attorney for the Authority is a participant;

- (v) Planning, discussing, or conducting specific collective bargaining negotiations;
- (vi) Preparation, administration, or grading of scholastic, licensing, or qualifying examinations;
- (vii) To prevent premature disclosure of an honorary degree, scholarship, prize, or similar award;
- (viii) To discuss and take action regarding specific methods and procedures to protect the public from existing or potential terrorist activity or substantial dangers to public health and safety, and to receive briefings by staff members, legal counsel, law enforcement officials, or emergency service officials concerning these methods and procedures; provided, that disclosure would endanger the public and a record of the closed session is made public if and when the public would not be endangered by that disclosure;
- (ix) To discuss disciplinary matters;
- (x) To discuss the appointment, employment, assignment, promotion, performance evaluation, compensation, discipline, demotion, removal, or resignation of government appointees, employees, or officials;
- (xi) To discuss trade secrets and commercial or financial information obtained from outside the Authority, to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained;
- (xii) To train and develop members of the Board and staff, including off-site retreats of members for such purposes;
- (xiii) To deliberate upon a decision in an adjudication action or proceeding by the Authority exercising quasi-judicial functions; and
- (xiv) To plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of law or regulations, if disclosure to the public would harm the investigation.

(b) Before a Board or Committee meeting or portion of a meeting is closed for an executive session, the Board or Committee shall:

- (i) Meet in an open session at which a majority of the members present shall vote in favor of closure;
- (ii) The Chairperson or acting Chairperson of the Board or Committee shall make a statement providing the reason for closure, including a citation from § 3.04(a) and the subjects to be discussed; and
- (iii) The Secretary to the Board shall make available to the public a copy of the written roll call vote and the statement.

(c) A Board or Committee meeting in a closed executive session shall not discuss or consider matters other than those matters listed under § 3.04(a).

§ 3.05 Notice to the Board of Meetings

(a) Before any meeting of the Board, the Secretary to the Board shall notify principal and alternate members of the meeting by:

- (i) Mailing a notice by first class mail, postage prepaid at least five (5) days (Saturdays, Sundays and legal holidays excluded) before the date of such meeting to the principal and alternate members' addresses appearing on the Authority's records; or
- (ii) Delivering a notice by hand, facsimile or e-mail transmission at least one (1) day (Saturdays, Sundays and legal holidays excluded) before the date of such meeting to the principal and alternate members' respective addresses, facsimile numbers or e-mail addresses appearing on the record.

(b) The notice shall state the date, time, and place of the meeting and shall be accompanied by a proposed agenda, prepared in accordance with § 3.07(a), except that where an emergency meeting is called, and time does not allow for the preparation of an agenda prior to the issuance of notice, the notice shall include a brief description of the matters to be considered.

(c) A member who is unable to attend a meeting due to legitimate personal or business reasons shall notify the designated alternate and the Secretary to the Board. If the member's corresponding alternate is also unable to attend, the alternate shall notify the Secretary to the Board of these circumstances and the reason for his or her absence.

(d) Satisfaction of the notice requirements of this Section may be waived by a majority of the members of the Board at a meeting at which a quorum is present, provided that the Secretary to the Board shall have made reasonable efforts to comply with such requirements. The attendance of a principal or alternate member at a Board meeting

shall constitute such a waiver unless specific objection is made before the presence of a quorum is determined.

§ 3.06 Notice of Meetings to the Public

(a) The Secretary to the Board shall inform the public of any Board or Committee meeting, including regular, emergency, or closed executive session meeting, when they are scheduled and when the schedule is changed;

(b) Notices to the public shall be posted on the Authority's website and in a public area at the District of Columbia Water and Sewer Authority Headquarters Building, or the location of the Board or Committee meeting not less than forty-eight (48) hours or two (2) business days before a meeting. Notice of meetings shall also be published in the *D.C. Register* as timely as practicable.

(c) The Secretary to the Board shall inform the public of a hearing to consider the establishment or adjustment of retail water and sewer rates by publishing a notice in the *D.C. Register* and a newspaper of general circulation at least ten (10) days prior to the date of the hearing.

(d) The Secretary to the Board shall inform the public of any emergency meeting by posting the notice of the meeting on the Authority's website and in a public area at the District of Columbia Water and Sewer Authority Headquarters Building, or the location of the Board or Committee meeting at the same time as notice of the meeting is issued to Board members.

(e) Each notice to the public for a Board or Committee meeting shall include the date, time, location, and planned agenda to be covered at the meeting. If the meeting or any portion of the meeting is to be closed, the notice shall include, if feasible, a statement of intent to close the meeting or any portion of the meeting, including citations to the reason for closure under § 3.04(a), and a description of the matters to be discussed.

§ 3.07 Agenda

(a) The Secretary to the Board shall prepare a proposed agenda under the Chairperson's direction, including a consent agenda, for each meeting of the Board and Committee. The agenda shall be attached to the notices provided for in §§ 3.05 and 3.06, and shall designate, by an asterisk or other mark, those items which do not involve "joint-use sewerage facilities" within the meaning of Section 201(4) of the Act (a "non joint-use" matter).

(b) A motion to change the designation or non-designation of an agenda item as non joint-use must be made and acted on prior to discussion of the item. In the event that the Board is to consider a matter not listed on the proposed agenda or matters at an emergency meeting for which no agenda was prepared, such matters are presumed to

be joint-use items unless a motion to redesignate the item is made and acted on prior to discussion of the item.

§ 3.08 Quorum

(a) Six (6) principal members shall constitute a quorum for the transaction of Board business, except that an alternate member may be counted towards a quorum in the absence of their corresponding principal member.

(b) Four (4) District members shall constitute a quorum for conducting a public hearing to establish or adjust retail water and sewer rates, pursuant to 21 DCMR § 4001.3.

(c) Committees shall not be required to meet a quorum requirement to hold a meeting.

(d) The number of attendees at a Board or Committee meeting shall not be kept below the number required to establish a quorum to avoid these requirements.

§ 3.09 Conduct of Business

(a) The Chairperson shall preside over Board meetings.

(b) Board actions shall be presented for a vote in the form of a resolution.

(c) The Board may postpone consideration of an agenda item by a majority vote of those members authorized to participate in the decision.

(d) All votes of the Board or Committee to hold a closed executive session or during a meeting conducted by electronic means shall be taken by roll call and recorded by the Secretary to the Board.

(e) Physical attendance at Board meetings is the preferred method of participation. However, Board members may participate telephonically and via videoconferencing in both Board and Committee meetings. Members participating in Board meetings telephonically or via videoconferencing may both be considered for purposes of determination of a quorum and vote. Members participating in Committee meetings telephonically or via videoconferencing may voice their recommendations to the Board. However, such telephonic and videoconferencing participation is to occur only when the following conditions are met: (i) neither the principal nor the principal's alternate can attend the meeting in person; and (ii) the Chairperson determines that the telephonic and/or videoconferencing communication is in the best interest of the Authority. In order for the Chairperson to make this determination, the Board member wishing to participate telephonically or via videoconferencing must notify the Chairperson as soon as he/she is aware of the need to participate in this manner or the day before the meeting, whichever occurrence is earlier in time.

(f) The Board may establish rules governing the conduct and procedure of Board and Committee meetings. Questions of procedure for meetings of the Board or Committee meetings that are not determined by these By-Laws or any rules adopted by the Board shall be governed by Robert's Rules of Order as interpreted by the Chairperson.

ARTICLE IV
Officers of the Board

§ 4.01 Appointment

(a) The Officers of the Board shall consist of the Chairperson, who shall be selected as provided for in the Act; a First Vice-Chairperson, Second Vice-Chairperson; and Vice-Chairperson and Alternate Vice-Chairperson for each participating jurisdiction.

(b) Effective September 5, 2019, the initial appointment of the First Vice-Chairperson and Second Vice-Chairperson shall be nominated by the Chairperson and, by resolution, approved by the Board; thereafter, these Officers shall be nominated by the Executive Committee and, by resolution, approved by the Board.

(c) Vice-Chairperson and Alternate Vice-Chairperson for each participating jurisdiction shall be nominated by the members from their respective jurisdiction and, by resolution, approved by the Board. In the event a jurisdiction has a Board member who holds an executive position in their jurisdiction (i.e. the City Administrator for the District of Columbia, the County Executive for Fairfax County, the Chief Administrative Officer for Prince George's County and the Chief Administrative Officer for Montgomery County) that person shall automatically be appointed the Vice-Chairperson for that jurisdiction, unless such person also serves as the Chairperson in which case a non-executive shall be appointed to fill the position of Vice-Chairperson for that jurisdiction.

(d) Except for the Chairperson, all other Board Officers established by these By-Laws shall, by resolution, be approved by the Board at the first regular Board meeting of the calendar year, or as necessary.

(e) The Board may, by resolution, create or abolish any officer position (other than the Chairperson).

(f) The Board may, by resolution, delegate the duties of the officer position (other than the Chairperson) to any alternate member.

(g) Except for the Executive Committee, the Chairperson shall appoint the chairperson and members of standing and ad-hoc Committees of the Board, as recommended by the Executive Committee.

§ 4.02 Duties

(a) The Chairperson's duties shall include but are not limited to calling emergency meetings of the Board in accordance with § 3.03, determining the agenda of a meeting for purposes of § 3.07, presiding over Board meetings in accordance with § 3.09, establishing ad-hoc Committees of the Board, appointing members and chairpersons of the standing and ad-hoc Committees of the Board in accordance with §§ 4.01(g) and 5.02, and carrying out such other duties as are specified in these By-Laws or delegated to the Chairperson by resolutions of the Board that are in accordance with the Act and these By-Laws.

(b) The First Vice-Chairperson shall fulfill the duties of the Chairperson if the Chairperson is absent or otherwise unavailable to do so. The Second Vice-Chairperson shall fulfill the duties of the First Vice-Chairperson if the First Vice-Chairperson is absent or otherwise unavailable.

(c) The Alternate Vice-Chairperson for each jurisdiction shall fulfill the duties of the Vice-Chairperson for their respective jurisdiction if the Vice-Chairperson is absent or otherwise unavailable to do so.

§ 4.03 Term of Office

Except for the Chairperson, an Officer of the Board shall serve a one (1) year term commencing upon approval of the Board and terminating on December 31st of each calendar year or until a successor assumes office, unless the Officer resigns or is removed.

§ 4.04 Resignation and Removal of Officers

(a) Officers of the Board shall serve the full term provided in these By-Laws unless such term is terminated earlier by resolution of the Board for cause.

(b) An Officer may resign by written notice to the Chairperson and the Secretary to the Board. The resignation shall take effect on the date the notice is received, unless the notice specifies a later effective date, which is acceptable to the Chairperson.

(c) The Board may appoint a successor to fill the unexpired term of a resigned or removed Officer (other than the Chairperson), or for a new term, as the Board considers appropriate.

**ARTICLE V
Committees**

§ 5.01 Establishment

(a) The following shall be standing Committees of the Board, with such other responsibilities as are specified by the Chairperson or appropriate resolution of the Board,

including but not limited to the review of contracts that are material to the Committee's assigned duties. The Board may create additional standing Committees as it deems necessary. The Committees shall receive detailed information in their areas of responsibility and make recommendations to the Board. Only formal actions of the Board through resolution can bind the Authority. The chairperson of a standing or ad-hoc Committee, with the concurrence of the Chairperson of the Board, may designate an acting chairperson for the purposes of chairing a particular standing or ad-hoc Committee meeting.

- (i) Executive Committee: Shall be composed of the Officers of the Board and shall meet at the direction of the Chairperson to: provide recommendations to the Board regarding Board organizational direction, strategic planning, and general affairs; nominate the First Vice-Chairperson and Second Vice-Chairperson as provided in § 4.01(b); ~~and~~ provide recommendations to the Chairperson for Committee chairmanship and membership; and provide recommendations to the Board regarding the terms, requirements and conditions of employment and performance review for the General Manager.
- (ii) Finance and Budget Committee: Shall make recommendations to the Board regarding actions required of or desired by the Board of Directors which have a significant and material fiscal effect as a result of operations, including by way of example and not limitation, adoption of the budget, borrowings, investments, grants, acquisitions, accounting, sales, insurance, adjustments to charges due for services or commodities furnished by the Authority, appropriations and the settlement of claims.
- (iii) District of Columbia Retail Water and Sewer Rates Committee: Shall be composed of the six (6) members of the Board representing the District and shall make recommendations to the Board regarding actions required of or desired by the Board of Directors with respect to the establishment of rates and fees for services or commodities furnished by the Authority; and customer services issues, including but not limited to customer education initiatives and customer assistance programs.
- (iv) Environmental Quality and Operations Committee: Shall make recommendations to the Board regarding actions required of or desired by the Board of Directors with respect to: the assets, facilities and infrastructure owned, operated, or managed by the Authority, including but not limited to emergency planning and safety of operations; matters related to environmental and water quality; the operation, repair and replacement of water distribution, and sewage and stormwater collection, treatment, and disposal systems; and

groundwater flow management.

- (v) Human Resources and Labor Relations Committee: Shall make recommendations to the Board regarding actions required of or desired by the Board of Directors with respect to the terms, requirements and conditions of employment for all employees, ~~including~~ ~~excluding~~ the General Manager, to include, by way of example and not limitation, matters involving compensation, pension and other benefits, awards and collective bargaining agreements.
- (vi) Audit Committee: Shall make recommendations to the Board regarding actions required of or desired by the Board of Directors with respect to the independent appraisal of internal controls, operations and procedures utilized by the Authority in its financial and other operations, shall make recommendations to the Board regarding the selection of the Authority's independent outside auditors, and shall meet as appropriate with such auditors with or without the presence of the Authority's management.
- (vii) Governance Committee: Shall make recommendations to the Board regarding the policies and procedures to be followed by the Board, matters of internal governance of the Board, resolution of ethical questions, the discharge of the Board's duties, including any modifications of these By-Laws, and policy level oversight of the Authority's legislative and governmental relations activities. The Committee may also consider other matters involving the conduct of members, which may be referred by the Chairperson.
- (viii) Strategic Planning Committee: Shall be composed of all Board members and shall make recommendations to the Board regarding both long and short term strategic planning.

§ 5.02 Appointment

Except for the Executive Committee, members of the Board's standing Committees and ad-hoc Committees, and the chairpersons of these Committees, shall be appointed by the Chairperson of the Board as recommended by the Executive Committee. Only District Board members may serve on Committees or Subcommittees with jurisdiction over the rates charged to District retail water and sewer customers.

§ 5.03 Duties

The principal duty of any Committee shall be to recommend proposed action to the Board of Directors. No Committee or individual member shall have the power to bind the Board or the Authority to any matter or obligation or to authorize any act by the Authority.

§ 5.04 Standing Committee Meetings

(a) At the first meeting each year of a standing Committee, the chairperson of such Committee (or the acting chairperson designated pursuant to § 5.01(a)), in consultation with the other members of the Committee, the Chairperson of the Board, and the General Manager, shall establish a meeting schedule for the remainder of the year and for the first meeting in the ensuing year. Such schedule shall specify the date, time, and location at which each Committee meeting shall be held. In consulting with the other members of the Committee, the Chairperson of the Board, and the General Manager, the chairperson of the Committee shall endeavor to the greatest possible extent to avoid conflicts with the meeting schedules of other Committees and to minimize inconvenience to Board Members and Alternates serving on multiple Committees, and to the General Manager and relevant staff, so as to facilitate Committee meeting attendance by all appropriate participants.

(b) Following the establishment of a Committee meeting schedule as provided in subsection (a), should the Chairperson of a Committee be unable to attend a scheduled meeting, such Committee chairperson shall request the Vice-Chairperson of the Committee (if a Vice-Chairperson has been designated) to serve as acting Chairperson for the purpose of conducting the meeting at the previously scheduled date, time, and location. If the Vice-Chairperson is unable to attend, the Committee Chairperson shall request another member of the Committee to serve as acting Chairperson for such meeting. In the event that neither the Vice-Chairperson nor another Committee member is available to serve as acting Chairperson for a previously scheduled meeting, or if it appears that a significant number of Committee members will be unable to attend at the scheduled date, time, or location, or at the request of the General Manager, the Committee Chairperson may request that the Chairperson of the Board waive the requirements of this subsection for good cause shown and permit such meeting to be held on a different date, or at a different time or location. Should the Chairperson not grant such a waiver, the meeting shall be cancelled.

**ARTICLE VI
Administration**

§ 6.01 General Manager

The Board shall hire a General Manager upon the affirmative vote of eight (8) voting members. The General Manager shall be the chief administrative officer of the Authority and, subject to the direction and supervision of the Board, shall have such supervisory and management responsibilities concerning the Authority's business, affairs, property, agents, and employees as the Board expressly determines by resolution. The General Manager may only be terminated upon an affirmative vote of eight (8) voting members.

§ 6.02 Delegation

The Board may by resolution delegate to the General Manager any of its authority to the extent permitted by the Act, including, but not limited to procurement authority in such amounts as are specified by the Board.

§ 6.03 Secretary to the Board

(a) There is hereby established the Office of Secretary to the Board. The Secretary to the Board shall not be an Officer of the Board and may not vote, but may be an employee of the Authority.

(b) The Secretary shall:

- (i) In addition to the responsibility established in section 3.07, coordinate under the direction of the General Manager, all Board meetings and other business activities of the Board;
- (ii) Prepare meeting minutes from Board meetings and other business activities when appropriate and prepare agendas in accordance with § 3.07;
- (iii) Keep a written transcript or transcription of the proceedings of the Board and any hearings in one or more books kept for that purpose. The Secretary shall have custody of all books, records and papers of the Board;
- (iv) Make available to the public any recordings, transcripts or transcription prepared pursuant to § 3.01 of these By-Laws and furnish copies to the public in accordance with that section;
- (v) Maintain the annual reports required by law and approved by the Board. The Secretary shall transmit copies of the approved report to the Mayor and the Council, and shall make the report available to the public;
- (vi) Have custody of the seal of the Authority and shall have authority to affix, impress or reproduce such seal on copies of resolutions and other official actions of the Authority and on all documents, the execution and delivery of which has been duly authorized by the Board; and
- (vii) Perform all duties and have all powers incident to the Office of the Secretary and shall perform such other duties and have such other

powers as may be assigned by these By-Laws, the Board, its Chairperson, or the General Manager.

**ARTICLE VII
Amendment**

These By-Laws may be amended by a majority vote of the Board at a meeting which is open to the public in accordance with the Open Meetings Amendment Act of 2010 (D.C. Official Code § 2-501 *et seq.*).

**ARTICLE VIII
Miscellany**

§ 8.01 Offices

(a) The principal office of the Authority and of the Board shall be located at the District of Columbia Water and Sewer Authority Headquarters Building, 1385 Canal Street, S.E., Washington, D.C. 20003.

(b) The Board may maintain other offices at such other places in the District as the Board may establish from time to time.

§ 8.02 Seal

The seal of the Authority shall be in the form of a circle and shall bear the name of the Authority and its year of establishment.

§ 8.03 Fiscal Year

The Fiscal Year of the Authority shall end on the last day of September of each year.

§ 8.04 Sureties and Bonds

The Board may require any officer, employee, or agent of the Authority to execute, as a condition of employment or continued employment, a bond in such sum, with such surety or sureties as the Board may direct, conditioned upon the faithful performance of such person's duties to the Authority, including responsibility for negligence and of the accounting of all property, funds, or securities of the Authority as may come into such person's control.

§ 8.05 Joint-Use Sewerage Facilities

Section 34-2202.01(4) of the D.C. Official Code, designates the following facilities as joint-use:

Little Falls Trunk Sewer; Upper Potomac Interceptor Sewer; Upper Potomac Interceptor Relief Sewer; Rock Creek Main Interceptor Sewer; Rock Creek Main Interceptor Relief Sewer; (duplicate deleted); Potomac River Sewage Pumping Station; Potomac River Force Mains; Watts Branch Trunk Sewer; Anacostia Force Main (Project 89 Sewer); Anacostia Force Main & Gravity Sewer; Outfall Sewers (Renamed Potomac River Trunk Sewers); Outfall Relief Sewers (Renamed Potomac River Trunk Relief Sewers); Upper Oxon Run Trunk Sewer; Upper Oxon Run Trunk Relief Sewer; Lower Oxon Run Trunk Sewer; Lower Oxon Run Trunk Relief Sewer; Blue Plains Wastewater Treatment Plant (Blue Plains); and Potomac Interceptor Sewer.

§ 8.06 Captions

The captions of the articles and sections of these By-Laws are provided solely for convenience of reference and shall not affect the meaning thereof.

Secretary, Board of Directors