

Governance Committee - 1. Call to Order - Ellen Boardman, Chairperson



**DISTRICT OF COLUMBIA
WATER AND SEWER AUTHORITY**

Board of Directors

Governance Committee

September 14, 2016

9:00 a.m.

- 1. Call to Order.....Ellen Boardman, Chairperson
- 2. [Blue Drop Progress Report](#).....George Hawkins, General Manager and CEO
- 3. [District of Columbia’s Proposed Constitution](#)..... Henderson J. Brown, IV, General Counsel
- 4. Executive Session¹.....Mustaafa Dozier, Chief of Staff
- 5. Adjournment..... Ellen Boardman, Chairperson

¹ DC Water’s 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)(1); legal, confidential or privileged matters under D.C. Official Code § 2-575(b)(4); 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); 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.



Blue Drop Governance Committee, September 14, 2016

District of Columbia Water And Sewer Authority
George S. Hawkins, CEO and General Manager





Benefits

- Spinoff of DC Water – nonprofit LLC to support ratepayer relief
- Singular, focused umbrella for existing revenue generating activities and staff at DCW
- Better positioned to bring products and services to market and compete with the private sector
- Nimble entity because of size and scope
- Transparency of income and expenses
- Limited ratepayer risk and liability to DCW
- Three-year timeframe for launch and proof of concept
- Use existing time and existing budgeted funds to launch



Precedent

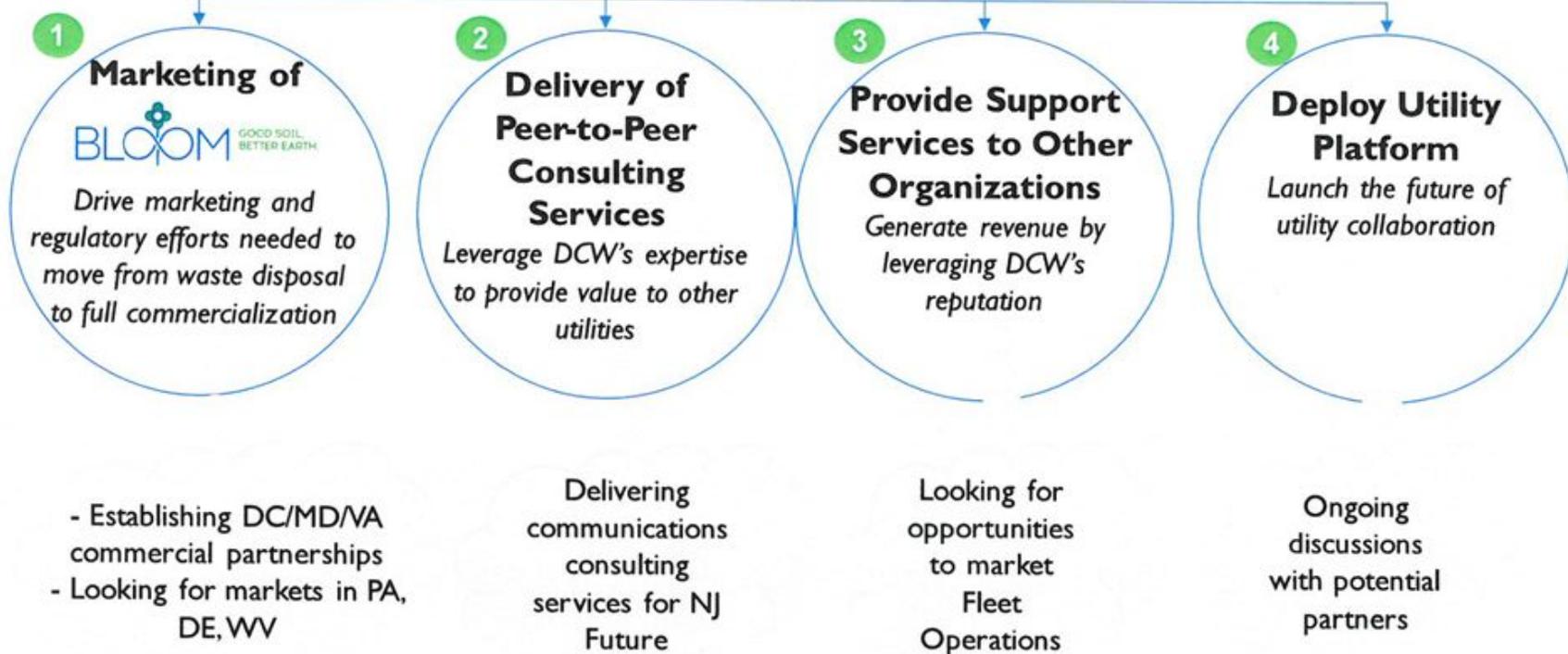
Other organizations have created similar entities to Blue Drop, including Clean Water Services (Oregon), Easton Utilities (Maryland), DC Public Library, DC Housing Authority, and the National Zoo.



Blue Drop Activities

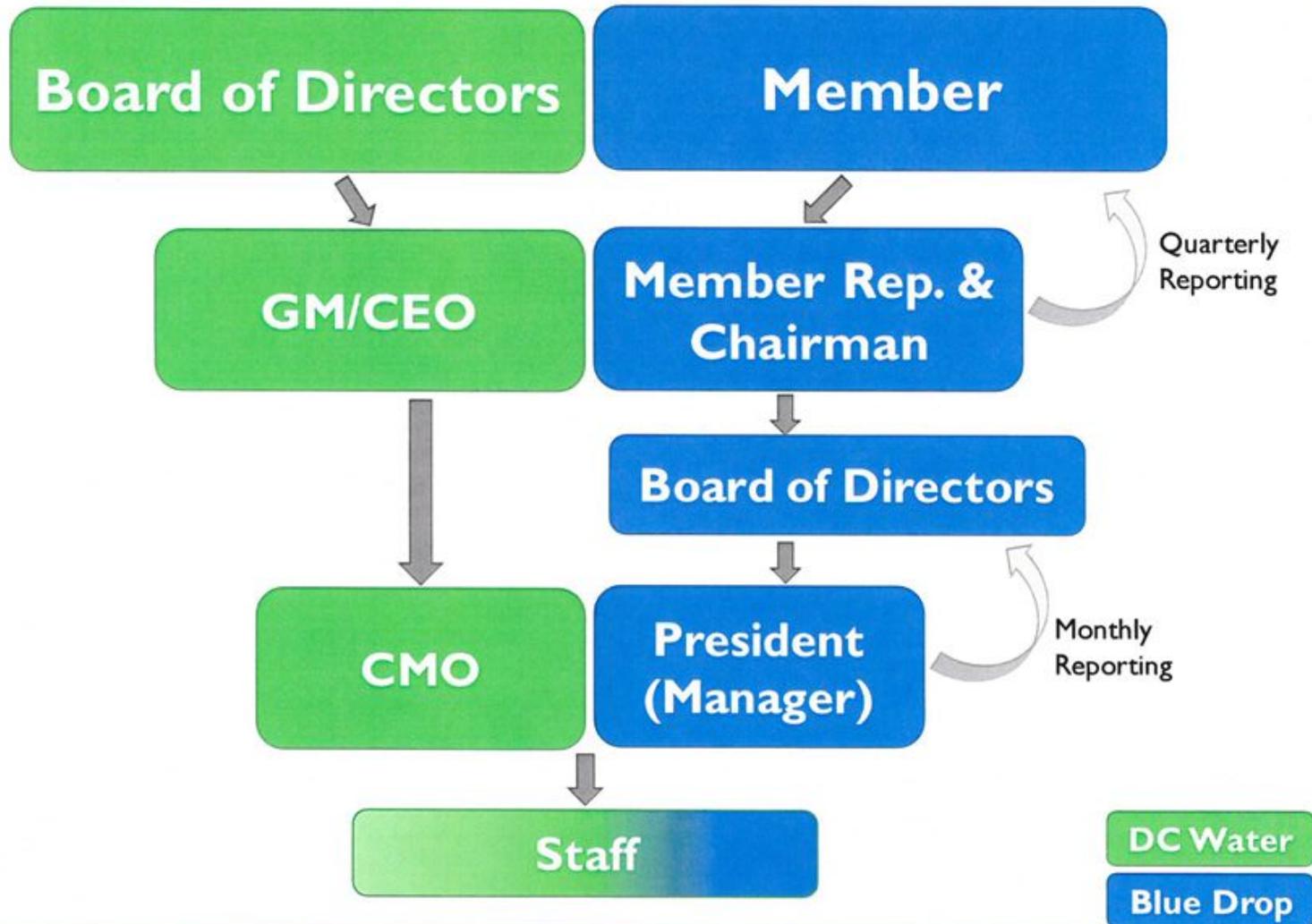


Bring focus and investment to generate non-ratepayer revenue





Governance Structure





Structural Boundaries

- Blue Drop derives its authority from the DCW BOD. It may not alter or exceed that authority.
- The Blue Drop BOD is appointed by the Chairman. It may not change the Chairman or the operating structure. The role of the Blue Drop BOD is limited to:
 - Advising staff
 - Directing day-to-day operations only
- As the sole member, DCW has control over the structure, nature of the operations, and legal authority of Blue Drop. Therefore, only the DCW BOD can change or revoke these at any time.



Citations from Operating Agreement

9.5. Acts Approved or Specially Delegated by the Member. Neither the Blue Drop Board nor the Manager shall perform any of the following acts unless the Member approves or specially delegates the authority to perform such acts to the Blue Drop Board:

- A. Borrow money in the LLC name or use LLC property as collateral on either a recourse or a non-recourse basis,
- B. Admit or purport to admit a new member,
- C. Merge into, acquire or be acquired by another entity,
- D. Create any subsidiary, affiliate, series or class of interests,
- E. Sale, lease or exchange of all or substantially all of the assets,
- F. Perform any act which is not a nonprofit purpose,
- G. Amend this Agreement or the Certificate of Organization.
- H. Dispose of the good will and reputation of the LLC,
- I. Dissolve or purport to dissolve the LLC, or
- J. File a voluntary petition in bankruptcy

9.6. Member Representative. The Member shall express its approvals and delegations through the Member Representative which the Member appoints under Paragraph 5.3



Incorporation Activities

Legal

- Council oversight committee chair consulted
- Squire Patton Boggs memo received
- Operating agreement drafted
- Bylaws drafted
- Shared services agreement drafted

Marketing

- Actively marketing Bloom – engaging with potential partners and navigating regulatory hurdles
- Developing service offerings for fleet, emergency management, external affairs, and security consulting
- Active outreach through speaking engagements, conferences, etc.

OPERATING AGREEMENT
OF BLUE DROP, LLC

A District of Columbia nonprofit limited liability company

THIS AGREEMENT is made this ____ day of _____, 2016 by and between the signatories to this Agreement.

ARTICLE I
DEFINITIONS

- 1.1. Agreement means this Operating Agreement, as it may be amended.
- 1.2. Board means the Board of Trustees (referred to as the Blue Drop Board) created under Paragraph 9.1.
- 1.3. Contribution means the total amount of cash, property or services which is dues, grants, member funding received in exchange for performing services.
- 1.4. Governance Rights mean any right of a Member to participate in the control of the internal affairs of the LLC that derives from that Member holding an Ownership Interest in the LLC.
- 1.5. It means it, he or she.
- 1.6. LLC means Blue Drop, LLC.
- 1.7. Management Rights mean any right of the Member to direct the affairs of the LLC.
- 1.8. Manager means the individual appointed as manager under Article XII.
- 1.9. Member means District of Columbia Water and Sewer Authority.
- 1.10. Membership means the rights and obligations of a member.
- 1.11. Third Person means any person who is not the Member or the Manager

ARTICLE II
FORMATION AND OBJECTIVES

2.1. Formation. The LLC is formed under the District of Columbia Limited Liability Company Act, as amended (referred to as the Act) as a nonprofit LLC. The LLC adopts the definitions of terms set forth in the Act which are the functional equivalent of the terms used in this Agreement.

2.2. Name. The name of the LLC is BLUE DROP, LLC.

2.3. Objectives. The objectives of the LLC are to:

- A. Provide relief from rising rates to water and sewer customers in the District of Columbia and surrounding area,
- B. Commercialize products and services related to water, and
- C. Improve the state of the water sector by sharing knowledge and expertise.

2.4. Books and Records. The books and records of the LLC are maintained at the principal office of the LLC.

2.5 Tax Exempt Status. If the LLC qualifies for tax exempt status under Internal Revenue Code § 501(c)(3), the LLC shall not engage in any activity which would cause the Corporation to be disqualified as an organization under Internal Revenue Code § 501(c)(3).

ARTICLE III
LLC FUNDS AND LLC PROPERTY

3.1. LLC Funds means any dollar amounts which the LLC receives as Contributions.

3.2. LLC Property means any item of real or personal property (other than cash) which the LLC receives as Contributions.

3.3. Personal or Real Property Acquired by LLC. Any item of real or personal property that the LLC acquires in exchange for LLC Funds or in exchange for any item of LLC Property

is owned by the LLC.

3.4. Personal or Real Property Acquired by a Member for the LLC. If a Member acquires an item of real or personal property for the benefit of the LLC, the dollar value of the item is a Contribution .

3.5. Intellectual Property means any item of information or content of any communication created for any purpose directly or indirectly with the use of LLC Funds or LLC Property.

- A. Any Intellectual Property which an employee or contractor of the LLC develops is LLC Property.
- B. The Manager shall determine in its sole discretion whether an item or content is Intellectual Property and, if so, whether it is developed by an employee or independent contractor of the LLC. The decision of the Manager is final.
- C. The LLC is empowered to license or sell any item of Intellectual Property.

3.6. LLC Name and Trade Name; Goodwill. The LLC name, any trade name and any goodwill is LLC Property.

ARTICLE IV FUNDING BY THE MEMBER

4.1. Initial Contribution. The Member contributes to the LLC cash, property or services set forth in the records of the LLC. The Member shall determine a dollar value for any Contribution which is property or services.

4.2. No Mandatory Contributions . The Member is not obligated to make any Contribution to the LLC unless the Member chooses in its sole discretion to make a Contribution.

ARTICLE V
MEMBERS

5.1. Members. A member is any person to whom the Member offers membership and who accepts that offer.

5.2. Member Status. The Member does not acquire a membership interest in the LLC.

5.3. Member Representative. The Member shall appoint and maintain an individual to represent the Member. The Member authorizes the representative to express to the Manager the decisions and approvals of the Member. The Member Representative is not a manager, member or an agent and shall not exercise the rights of nor discharge the duties of the Manager or agent.

ARTICLE VI
FISCAL MATTERS

6.1. Application of Tax Effects. The LLC shall, with the advice of a tax professional, perform such legal acts as are necessary and proper to achieve a tax effect which is advantageous and legal with respect to the tax status of the Member as a member of a nonprofit LLC.

6.2. Financial Accounting. The LLC shall maintain its accounts on a cash basis in accordance with GAAP applied in a consistent manner and appropriate for the business of the LLC.

6.3. Fiscal Year. The fiscal year of the LLC is the calendar year.

6.4. Tax Matters Member. The Manager is designated as the tax matters member (TMP) under the Internal Revenue Code.

ARTICLE VII
BANKING MATTERS

7.1. LLC Budget. The Manager shall cause the LLC to develop a budget for each fiscal year.

7.2. LLC Disbursement Account. Withdrawals from LLC accounts shall be made under the signature of a person who the Member designates.

7.3. No Commingling. LLC Funds shall not be commingled with the funds of the Member or Third Persons.

ARTICLE VIII
ADMISSION OF A MEMBER

8.1. Qualifications. A person is eligible to be a member as long as the person has the qualifications set forth in Attachment I.

8.2. Initial Obligations. A person who becomes a member under Paragraph 8.1 must perform the obligations set forth in Attachment II.

8.3. Continuing Rights and Obligations. A person who becomes a member under Paragraph 8.1 is entitled to the rights and must perform the obligations set forth in Attachment III.

ARTICLE IX
GOVERNANCE AND MANAGEMENT

9.1. Blue Drop Board. The LLC is governed by the Blue Drop Board. The Member appoints each trustee and the Chairperson. The functions of the Board are:

- A. Recommend policies to the Member,
- B. Cause the policies articulated by the Member to be implemented,
- C. Adopt bylaws which set forth operating procedures for the Board,
- D. Oversee the activities of the Manager,
- E. Recommend to the Member whether to implement one or more acts set forth in Paragraph 9.5.

9.2. Appointment of Manager. The Member appoints Alan Heymann as the Manager of the LLC.

- A. The Manager is the only authorized agent of the LLC. Any legal instrument signed by the Manager is an act of the LLC.
- B. The Manager shall not be the Member Representative.

9.3. Authorized Acts by Manager. The Manager is authorized to perform the following acts without the approval or further delegation of authority by the Member:

- A. Any act which the Manager considers necessary and proper to manage the LLC in the ordinary course of business,
- B. Establish accounts with financial institutions in the name of the LLC and deposit and withdraw LLC Funds under his/her signature authority,
- C. Hire/fire employees and independent contractors,
- D. Delegate to another individual any authority or power under this Paragraph.
- E. With advice of counsel, recommend to the Board to:
 - 1. litigate an LLC claim or cause of action,
 - 2. settle or compromise a debt or obligation owed to the LLC or which the LLC owes,
 - 3. obligate the LLC to perform under contracts which are in the ordinary course of business without a limit on the dollar amount of any potential liability.
 - 4. The Manager shall implement his/her recommendation unless the Board disapproves of that recommendation.

9.4. Fiduciary Duties. The Manager is a fiduciary who must act or omit to act in a manner which satisfies the fiduciary duties set forth in law to which a manager is bound including but not limited to:

- A. Duty of loyalty,

- B. Duty to act in good faith,
- C. Duty to act consistent with the business judgment rule,
- D. Duty not to usurp or divert a business opportunity of the LLC, and
- E. Duty not to compete with the LLC.

9.5. Acts Approved or Specially Delegated by the Member. Neither the Blue Drop Board nor the Manager shall perform any of the following acts unless the Member approves or specially delegates the authority to perform such acts to the Blue Drop Board:

- A. Borrow money in the LLC name or use LLC property as collateral on either a recourse or a non-recourse basis,
- B. Admit or purport to admit a new member,
- C. Merge into, acquire or be acquired by another entity,
- D. Create any subsidiary, affiliate, series or class of interests,
- E. Sale, lease or exchange of all or substantially all of the assets,
- F. Perform any act which is not a nonprofit purpose,
- G. Amend this Agreement or the Certificate of Organization.
- H. Dispose of the good will and reputation of the LLC,
- I. Dissolve or purport to dissolve the LLC, or
- J. File a voluntary petition in bankruptcy.

9.6. Member Representative. The Member shall express its approvals and delegations through the Member Representative which the Member appoints under Paragraph 5.3.

9.7. Protection of LLC Property. The Manager shall preserve and protect LLC Property and LLC Funds. The Member shall not do, or permit to be done, any act by which LLC Property can be attached or taken in execution. The Manager shall punctually pay the debts and

obligations of the LLC.

9.8. Time and Attention. The Manager shall devote such time and attention to the business of the LLC as the Member deems necessary and proper.

ARTICLE X
SERIES OF MEMBERSHIP INTERESTS

10.1. Series. With advice of counsel, the Board may form series of membership interests.

10.2. Maintenance of Series. The Manager shall cause each series to be maintained as required under the Act including but not limited to:

- A. Maintain operational records for the business of each series, including the identity of each Member that is a participant in each series, that are separate from the records for the business of any other series or the business of the LLC,
- B. Account for and maintain separate financial statements for the assets of each series separate from the assets of any other series or the assets of the LLC, and
- C. Maintain the funds and revenues of each series separate from the funds and revenues of any other series and from the funds and revenues of the LLC.

ARTICLE XI
DURATION AND DISSOLUTION

11.1. Perpetual Duration. The LLC has perpetual duration.

11.2. Voluntary Dissolution. The LLC shall dissolve at such time and under whatever circumstances the Member directs. Unless the Member continues the LLC, the LLC shall liquidate and terminate as set forth in Article XV.

11.3. Mandatory Dissolution. The LLC shall dissolve if the Member is dissolved under

the laws of the District of Columbia.

ARTICLE XII
TERMINATION AND LIQUIDATION OF THE LLC

12.1. Dissolution Leading to Termination. Upon a dissolution of the LLC under Article XI, the Member shall cause the LLC to take full account of LLC assets and liabilities.

12.2. Satisfaction of LLC Obligations. The LLC shall satisfy any obligations or liabilities owed to creditors out of the LLC Funds or LLC Property. The LLC Funds and Property, if any, shall be paid in the following order:

- A. To pay or provide for all dollar amounts owed by the LLC to creditors other than the Member, and for the expenses of winding up, then
- B. To pay or provide for all dollar amounts owed by the LLC to the Member other than Contributions.
- C. The LLC is not obligated to return to any member or to any person any portion of the dollar amount of dues or grants.
- D. If the LLC qualifies for tax exempt status under Internal Revenue Code § 501(c)(3), then the LLC shall distribute its assets, if any, which remain after the payments under A and B, *supra*. are made shall be distributed only to another organization which is qualified as a tax exempt organization under Internal Revenue Code § 501(c)(3).

12.3. Continuation of this Agreement. Subject to the Act, each provision of this Agreement continues in full force and effect.

12.4. Termination. When the payment process under Paragraph 12.3 is complete, the LLC terminates.

ARTICLE XIII
CONTRIBUTION AND INDEMNIFICATION

13.1. No Contribution. No Member or member is not obligated, either directly or indirectly, to contribute to satisfy a judgment against another member that is the result of a cause

of action against the judgment member for malfeasance, misfeasance or nonfeasance.

13.2. Indemnification. No Member or member is liable to the LLC for any claim or liability asserted by any Third Person. The LLC shall indemnify the Member for any act, or failure to act as long as:

- A. The decision to act or fail to act was taken by the Member under a good faith belief that such decision was within the scope of its authority and to be the best interests of the LLC, and
- B. The act or failure to act was not the result of malfeasance, misfeasance or nonfeasance or willful misconduct by the Member.

13.3. Scope of Indemnification. The indemnification includes but is not limited to reasonable attorneys' fees and other expenses which the Member incurs in litigating or settling any claim or liability.

13.4. Source of Indemnification. The Member shall be indemnified only from LLC Funds or LLC Property.

ARTICLE XIV ACTS OF THE MEMBER

14.1. Agent. Only the Manager is authorized to act as the agent of the LLC.

14.2. Exclusive Agent. The agent is an agent only for the LLC and not for the Member.

ARTICLE XV ARBITRATION

15.1. Arbitration with Third Persons. With advice of counsel, the LLC shall not conclude a contract with any Third Person unless the Third Person is obligated to submit any dispute to arbitration.

15.2. Arbitration with Manager. If a dispute occurs between the LLC and the Manager which arises from or is incident to Article XII or any other agreement between the LLC and the

Manager, the LLC and the Manager shall submit the dispute to arbitration in the District of Columbia according to the Commercial Rules of the American Arbitration Association (AAA) or such other neutral arbitrator as the parties choose.

15.3. Binding Effect; Limits. The decision/award of the AAA or other arbitrator is final and binding on the LLC and Manager.

- A. Each Party shall be subject to the personal jurisdiction of the courts located in the District of Columbia and waives the right to assert lack of personal jurisdiction in any legal proceeding.
- B. Each Party shall bear any cost imposed on that party by the AAA. The Parties share equally any cost imposed on both parties by the AAA.
- C. Each Party shall bear its own attorneys' fees. The arbitrator shall not order nor have the power to order a Party to pay or reimburse the other Party for attorneys' fees, expert fees or any other fees incurred in connection with, preparing, presenting or defending its case.
- D. The arbitrator shall not award nor be empowered to award punitive or exemplary damages.
- E. The arbitrator shall not nor have the power to grant any form of injunctive relief.
- F. The arbitrator shall award interest on a money damage award. Interest is calculated at the rate imposed on judgments by the courts of or in the District of Columbia. Interest begins to accrue on the date on which the breach or injury occurred and continues to accrue on a compounded basis until the date on which the prevailing party actually receives the dollar amount of the award plus accrued interest.

ARTICLE XVI INSURANCE

16.1. Types of Insurance. The LLC shall carry such insurance(s) as is appropriate for a nonprofit entity.

16.2. Premiums and Carriers. The LLC shall pay the dollar amount of the premium for each insurance policy. Each insurance policy shall be written by a reasonable insurance company that has the highest A.M. Best rating.

ARTICLE XVII
GOVERNANCE PROVISIONS

17.1. Amendment. This Agreement shall not be amended in any way unless the Member, in consultation with the Board, resolves to amend this Agreement. The text of that amendment must be set forth in a writing signed by the Member and incorporated into and made part of this Agreement.

17.2. Severability. Each term and condition of this Agreement is severable. If any term or condition is illegal or invalid for any reason, the other terms and conditions remain in full force and effect.

17.3. Entire Agreement. This Agreement is the full and complete operating agreement. Each prior oral or written agreement is merged into this Agreement and extinguished.

17.4. Governing Law. This Agreement is exclusively governed by and construed under the laws of the District of Columbia except with respect to the conflicts of laws principles of the District of Columbia.

17.5. No Third Party Beneficiary. This Agreement shall not and is not intended to benefit nor to grant any right or remedy to any person or entity that is not a party to this Agreement.

17.6. Official Act. An official act of the LLC is evidenced by the personal attestation by the Manager or a statement that the act is an official act of the LLC signed by the Manager.

17.7. Notices. If any notice is required in connection with this Agreement, the noticing party shall deliver the notice by the most reasonably rapid means available under the circumstances to the communications address set forth in the records of the LLC. A notice is delivered when the person to whom it is directed receives the notice.

[SIGNATURE PAGE NEXT]

INTENDING TO BE LEGALLY BOUND, each individual certifies that he /she has:

- A. Been duly authorized the individual to sign this Agreement,
- B. Been duly authorized the individual to bind the LLC to the obligations in this Agreement, and
- C. Acknowledged that this Agreement is an act of the LLC.

FOR THE MEMBER:

Signature

Print Name:

For: District of Columbia Water and Sewer Authority

FOR THE BOARD OF TRUSTEES OF BLUE DROP, LLC

Signature

Print Name:

Title: Chairperson

FOR: BLUE DROP, LLC:

Signature

Print Name:

Title: Managing Member and Authorized Agent

ATTACHMENT I
Qualifications

[TO BE INSERTED]

ATTACHMENT II
Initial Obligations of Members

[TO BE INSERTED]

ATTACHMENT III
Rights and Obligations of Members

BYLAWS

OF

BLUE DROP LLC

(a District of Columbia nonprofit limited liability company)

General

1. Organization. Blue Drop LLC (referred to as the LLC) is organized and validly existing as a non profit limited liability company under the laws of the District of Columbia.
2. Creation of the Board of Trustees. The Board of Trustees (referred to as the Blue Drop Board) is created under Article IX, para. 9.1 of the Operating Agreement.
3. Appointment of Chairperson. The Member appoints the Chairperson.
4. Appointment of the Trustees. The Chairperson appoints the trustees.
5. Powers of the Board. The LLC is governed by the Blue Drop Board. The Board shall:
 - A. Recommend policies to the Member,
 - B. Cause the policies articulated by the Member to be implemented,
 - C. Adopt bylaws which set forth operating procedures for the Board,
 - D. Oversee the activities of the Manager,
 - E. Recommend to the Member whether to implement one or more acts set forth in Article IX, para. 9.5. of the Operating Agreement, and
6. Bylaws. These Bylaws set forth the rules by which the Blue Drop Board shall operate and exercise its powers.
7. Signatures. Any signature necessary or desirable on any LLC document or instrument may be affixed by any means by which the intent of the signor to be bound by the contents of the

document or instrument is manifested.

Trustees

8. Appointment and Tenure. The Member shall appoint each trustee and set the term for which each trustee shall serve.

9. Number of Trustees. The number of trustees is either three or five. Each trustee must be a natural person.

10. Meetings. The Blue Drop Board shall meet on or before December 31, 2016 and at least once in each subsequent consecutive calendar year.

- A. Either the Chairperson or the Member may call and hold such other meetings during the year.
- B. At any time, any two trustees may call a meeting of the Blue Drop Board and the Chairperson shall convene the meeting.
- C. The Chairperson shall deliver notices of meetings at a reasonable time before the date of the meeting which sets forth the time, date, means of communication and agenda.

11. Conduct of the Meetings. The Blue Drop Board shall conduct its meetings by or through any reasonable physical or electronic means. The Blue Drop Board shall create and maintain its proceedings in any form to which the trustees agree.

12. Voting and Quorum. Each trustee is entitled to cast one vote.

- A. A decision of the Blue Drop Board is an official act of the LLC as long as a majority of the trustees vote in favor of the decision and it is set forth in a written resolution.
- B. If, due to a vacancy, the number of trustees is an even number then the Chairperson casts two votes.

13. Vacancy. A vacancy is created when a trustee is removed or is dissociated from the Board.

- A. The Member may remove any trustee and appoint another person as trustee to fill the vacancy.
- B. A trustee dissociates when the trustee resigns, dies or becomes disabled. The Member appoints another person as trustee to fill the vacancy.

14. Compensation. The LLC shall pay and reimburse the trustees in such dollar amounts and at such times as the member determines in its sole discretion.

Chairperson

15. Appointment. The Member appoints the Chairperson.

16. Powers. The Chairperson shall:

- A. Schedule the meetings of the Blue Drop Board,
- B. Set the agenda for the meetings, and
- C. Conduct the meetings.

17. Vacancy. A vacancy is created when the Chairperson is removed or is dissociated from the Blue Drop Board.

- A. The Member may remove the Chairperson and appoint another person as Chairperson to fill the vacancy.
- B. The Chairperson dissociates when he or she resigns, dies or becomes disabled. The Member shall appoint another person as Chairperson to fill the vacancy.

Secretary

18. Appointment. The Chairperson appoints a Secretary.

19. Duties. The Secretary shall:

- A. Create and maintain a record of the proceedings of the Blue Drop Board,

and

- B. Countersign each resolution of the Blue Drop Board.

Conflicts of Interest

20. Conflicts. A conflict of interest exists when any trustee, manager or managerial employee engages, directly or indirectly, in a transaction with the LLC by which any such person directly or indirectly receives an item of value from the LLC. The Blue Drop Board shall develop and implement a policy and protocol to effectuate the terms of this Paragraph.

21. Records Retention Policy. The Blue Drop Board shall develop and implement a policy and protocol according to which the LLC shall retain records of the LLC using the most secure and technologically efficient available means.

Amendments

22. The Blue Drop Board may amend or modify these Bylaws. Any such amendment or modification must be set forth in a resolution.

THE FOREGOING BYLAWS WERE AUTHORIZED BY THE BLUE DROP BOARD OF TRUSTEES BY RESOLUTION DATED _____, 2016.

Presented and Adopted: October 6, 2016

SUBJECT: Approval to Authorize the General Manager to Establish Blue Drop, LLC

**#16-XXX
RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
D.C. WATER AND SEWER AUTHORITY**

The members of the Board of Directors (“Board”) of the District of Columbia Water and Sewer Authority (“DC Water”) at the Board meeting held on October 6, 2016, upon consideration of a joint use matter, decided by a vote of ____ () in favor and ____ () opposed, to take the following action to authorize the General Manager to establish a not-for-profit entity under the laws of the District of Columbia to be known as Blue Drop, LLC.

WHEREAS, District of Columbia Home Rule Act states, “[n]otwithstanding any other provision of this chapter or any District of Columbia law, the financial management, personnel, and procurement functions and responsibilities of the District of Columbia Water and Sewer Authority shall be established exclusively pursuant to rules and regulations adopted by its Board of Directors.” D.C. Code § 1-204.96(a); and

WHEREAS, the Council of the District of Columbia created DC Water pursuant to the *Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996* (“Enabling Legislation”) D.C. Code 34-220.01 et seq.; and

WHEREAS, the Enabling Legislation authorizes DC Water to “exercise any power usually possessed by public enterprises or private corporations performing similar functions that is not in conflict with the District of Columbia Home Rule Act, or the laws of the District...” D.C. Code § 34-2202.03(17); and

WHEREAS, the Enabling Legislation grants DC Water the power to “undertake any public project, acquisition, construction, or any other act necessary to carry out its purposes...” D.C. Code § 34-2202.03(13); and

WHEREAS, the Enabling Legislation grants DC Water the power to “do all things necessary or convenient to carry out the powers expressly provided...” in the Enabling Legislation. D.C. Code § 34-2202.03(30); and

WHEREAS, as a consequence of ever changing regulatory mandates, the need to replace and maintain aging water distribution and sewage conveyance system infrastructure and capital commitments that have been and will be necessary to reduce

the frequency and volume of combined sewer overflows to the Potomac and Anacostia rivers, Rock Creek and their tributaries, the rates, fees and charges for delivering services to customers in the District of Columbia and to user jurisdictions have increased steadily in recent years, and will continue to rise in coming years; and

WHEREAS, the rate at which water and sewer rates, fees and charges are escalating presents a growing affordability challenge for customers in the District of Columbia and to the user jurisdictions; and

WHEREAS, the Board has directed the General Manager to find innovative ways to generate revenue from new sources to help mitigate the rate of increase in rates, fees and charges that are necessary to recover the cost of providing services; and

WHEREAS, DC Water has developed a reputation in the industry as a leader in innovation; and

WHEREAS, DC Water holds or is seeking patent rights for several inventions in the United States and in other countries for technologies and processes that were developed from research and operation of its facilities; and

WHEREAS, DC Water makes BloomTM, the soil conditioner made from Class A biosolids produced from operations at Blue Plains, which can be used as a unique soil amendment to restore urban soils, promote greater crop yields and augment home garden and lawn care, and which has significant commercial value; and

WHEREAS, DC Water conducts other operations, including but not limited to laboratory services and fleet maintenance that can be marketed to other agencies, persons and entities for a fee; and

WHEREAS, DC Water is committed to maximizing value from every element of its operations for the benefit of the environment, its rate payers and customers; and

WHEREAS, the General Manager has requested permission to create a not-for-profit entity, that will be known as Blue Drop, LLC (Blue Drop) and which will be dedicated to commercializing products, services, and intellectual property developed from Authority operations; and

WHEREAS, the General Manager has indicated that Blue Drop will be a separate legal entity, which will seek tax exempt status under Internal Revenue Code §501(c)(3); and

WHEREAS, the General Manager has indicated that Blue Drop will be organized to achieve the following purposes: 1) sharing knowledge regarding water, wastewater, biosolids and resource and energy recovery technology; 2) commercializing products and services developed from DC Water operations; and 3) providing revenue to support relief from rising rates, fees and charges to water and sewer customers in the District of Columbia and to the user jurisdictions; and

WHEREAS, upon consideration of the General Manager's request, the Board has determined that granting the request is a matter of business judgment, which is within its discretion pursuant to the authority granted by the Enabling Legislation and the above cited provision of the Home Rule Act; and

WHEREAS, the Board expects that the Blue Drop entity will be able to respond rapidly and efficiently to changing market dynamics; and

WHEREAS, the Board has determined that Blue Drop should be part of DC Water's plan to manage its finances and to perform its statutory responsibilities.

NOW THEREFORE BE IT RESOLVED:

1. The Board authorizes the General Manager to establish Blue Drop as a District of Columbia limited liability not-for-profit entity for the purposes of:
 - a. Sharing knowledge;
 - b. Commercializing products and services developed from DC Water's operations;
 - c. Providing revenue to DC Water to support relief from rising rates, fees and charges to water and sewer customers in the District of Columbia and to the user jurisdictions;
 - d. Promoting resource recovery and conservation; and
 - e. Other purposes consistent with and complementary to the principles described in this Resolution.
2. The General Manager is authorized to take all actions necessary to establish the Blue Drop entity's operations, including, but not limited to marketing Bloom, unique technologies, intellectual and other property, and peer to peer consulting, supportive, and collaborative services to other persons, entities and organizations.
3. The General Manager shall report to the Board on the progress and operations of Blue Drop as he determines necessary, but no less frequently than annually.
4. The General Manager is authorized to take any other action he deems appropriate to further the intentions expressed in this Resolution.

This Resolution is effective immediately.

Secretary to the Board of Directors