

CAPE FEAR PUBLIC UTILITY AUTHORITY AMENDED AND RESTATED BYLAWS

Adopted October 9, 2013

Article I Seal and Offices

1.1 Seal. The seal of the Cape Fear Public Utility Authority (Authority) shall be circular and shall have inscribed thereon, within and around the circumference, the following: "CAPE FEAR PUBLIC UTILITY AUTHORITY" and in the center shall be the word "SEAL."

1.2 Offices. The principal office of the Authority shall be at 235 Government Center Drive, Wilmington, North Carolina 28403, but the Authority may also have offices located in such other places as the Authority may from time to time designate as convenient to meet the purposes and obligations of the Authority.

Article II Membership

2.1 Number, Terms and Appointment. The number, terms and appointment of members of the Authority shall be as set forth in the Articles of Incorporation of the Authority, as amended from time to time, and on file in the office of the North Carolina Secretary of State.

2.2 Resignation. Any member may resign at any time by giving written notice of resignation to the Authority and to the City of Wilmington (City), County of New Hanover (County) or other political subdivision by which the member was appointed.

2.3 Vacancies. Any vacancy in membership shall be filled for the unexpired term by the political subdivision making the original appointment.

2.4 Oath of Office. Before entering upon his or her duties, each member shall be qualified and shall take and subscribe an oath or affirmation to support and maintain the constitution and laws of the United States and the State of North Carolina and to perform faithfully the duties of the office. A record of each oath or affirmation shall be filed with the Clerk of the Authority and kept with the Authority's official documents.

2.5 Reimbursement and Compensation. Members of the Authority and its committees shall be reimbursed for their out-of-pocket expenses incurred for attendance at any out-of-town meetings and conferences as determined by the Authority. Members shall be paid a monthly stipend as determined by the Board.

Article III Meetings

3.1 Regular Meetings. Regular meetings of the Authority shall be held at least once per calendar month at such time or times and place(s) within New Hanover County as may be prescribed by resolution of the Authority. When any regular meeting of the Authority falls on a legal holiday of any participating political subdivision, then such meeting shall be held on the next following regular business day. Whenever the date of a regular meeting is determined to create a scheduling conflict, the Authority may by vote change the date and hour of the meeting.

3.2 Annual Meeting. Except for the initial organizational meeting, the first regular meeting in November of each year shall be the annual meeting of the Authority.

3.3 Special Meetings. Special meetings of the Authority may be held at any time and place upon the call of the Chairperson or Vice-Chairperson or any two members upon at least forty-eight (48) hours written notice to each member served personally or left at his or her usual place of business or residence or served by facsimile or electronic mail. Notice of any meeting of the Authority may be waived in writing either before or after the meeting and shall be deemed waived by attendance at any such meeting without first objecting to lack of proper notice. Special meetings shall be held at such place and time and for the purpose(s) specified in the notice.

3.4 Voting. Each member is entitled to one vote. Voting on matters coming before the Authority shall be in person; however, a video or telephone conference meeting may be held in compliance with the North Carolina Open Meetings Law. Voting on Authority matters via electronic mail is not allowed.

3.5 Quorum. The Authority may exercise any of the powers conferred upon it at any meeting, regular, special or adjourned, at which a quorum is present. A majority of members shall constitute a quorum, and the vote of a majority of the members present and voting shall be necessary for any action taken by the Authority, unless otherwise specified in these amended and restated bylaws or the Articles of Incorporation for the Authority. The Chairperson shall vote on all questions. No vacancy in the membership of the Authority shall impair the right of a quorum to exercise all the rights and perform all of the duties of the Authority. The number of members required for a quorum shall not include any unfilled vacancies. Every member shall vote unless excused by a vote of the remaining members for a conflict. A failure to vote by a member who is present at the meeting, or who has withdrawn from the meeting without being excused by the Authority, shall be recorded as an affirmative vote.

3.6 Order of Business. The order of business at regular meetings shall be as follows:

- (a) Determination of a quorum
- (b) Approval of minutes
- (c) Consent agenda
- (d) Public hearings (as necessary)

- (e) New business (includes Administrative and Committee Reports, Resolutions, and Ordinances)
- (f) Old business
- (g) Discussion by members of items not on the agenda
- (h) Adjournment.

3.7 Consent Agenda. The Authority may designate a part of the agenda as the “consent agenda”. Items shall be placed on the consent agenda that are considered routine and non-controversial. Any member may remove an item from the consent agenda and place it on the regular agenda. All items remaining on the consent agenda shall be voted on and adopted by a single motion, with the minutes reflecting the motion and vote on each item.

3.8 Robert’s Rules. If any disagreement in the conduct of any meeting or the order of business arises, the rules of parliamentary procedures as set forth in *Robert’s Rules of Order 10th Edition* shall prevail, providing that the terms and conditions of the Articles of Incorporation for the Authority, these amended and restated bylaws and the North Carolina General Statutes shall in all cases be controlling.

3.9 Minutes. Minutes of regular and special meetings shall be kept in writing. Minutes shall be made available to members within ten working days after adjournment.

3.10 Chair pro tempore. In absence of the Chairperson and Vice-Chairperson, the Authority shall appoint a Chair *pro tempore* who shall preside at the meeting.

3.11 Open Meetings; Public Records. The Authority and its committees are subject to the North Carolina Open Meetings Law and North Carolina Public Records Act. Subject only to lawfully recognized exceptions, all official meetings of the Authority, including Committee Meetings, shall be conducted openly and in compliance with North Carolina General Statutes 143-318.9, et seq.

At every official meeting of the full Authority, the presiding officer shall devote an agenda item to hearing petitions and requests to the Authority from the public. When this agenda item is reached in each meeting, the presiding officer shall determine whether any member of the public wishes to petition or make any request of the Authority, and the Authority may hear petitions and requests for such period as it deems appropriate.

The Authority encourages public attendance at all of its meetings. Only such discussion or participation by visiting persons as is invited by consent of the Authority shall be permitted at times other than when petitions and requests are being heard.

Pursuant to the North Carolina Open Meetings Law and Public Records Act, the Authority shall keep full and accurate minutes of all official meetings, including any closed sessions held pursuant to North Carolina General Statute § 143-318.11. Such minutes may be in written form or, at the option of the Authority, may be in the form of sound or video and sound recordings.

When the Authority meets in closed session, it shall keep a general account of the closed session so that a person not in attendance shall have a reasonable understanding of what transpired. Such accounts may be a written narrative, or video or audio recordings. Such minutes and accounts shall be public records within the meaning of the Public Records Law, G.S. 132-1 et seq.; provided, however, that minutes or an account of a closed session conducted in compliance with G.S. 143-318.11 may be withheld from public inspection so long as public inspection would frustrate the purpose of a closed session.

Article IV

Officers

4.1 Officers. The officers of the Authority shall be a Chairperson, Vice-Chairperson, Secretary, and Treasurer.

4.2 Election and Appointment of Officers. The Authority shall, at its July regular meeting each year, or if a quorum is not present at such meeting, then at the next regular meeting or at a special meeting called for such purpose at which a quorum is present, elect a Chairperson, Vice-Chairperson, Secretary, and Treasurer from its membership who shall hold office for one year or until their successors are duly elected and qualified unless they resign or are removed prior to that time. The Chairperson and Vice-Chairperson shall not be appointed to the Authority by the same participating political subdivision. Any officer may be elected by the Authority to succeed himself or herself in office for no more than three successive terms in the same office. If any offices become vacant for any reason, the Authority shall at the next regular meeting fill the office.

4.3 Chairperson. The Chairperson shall preside at all meetings of the Authority. The Chairperson shall prepare, or cause to be prepared, an agenda for each meeting which shall include each proposed resolution, ordinance and report on which action is to be taken at the meeting. The agenda for each regular meeting shall be delivered to members at least five days prior to the meeting. A request from an Authority member to have an item placed on the agenda for a regular meeting is to be made to the Chairperson at least ten days before the meeting. Agenda items may be added without prior notice by the Chief Executive Officer with Board approval when necessary to attend to urgent Authority matters. The Chairperson shall perform other duties commonly incident to the office and shall perform other duties and have other powers and authority as may be conferred from time to time by the Authority in accordance with law.

4.4 Vice-Chairperson. In the absence of the Chairperson, the Vice-Chairperson shall serve as Chairperson and at such time shall have the same powers, duties and authority as the Chairperson. The Vice-Chairperson shall perform other duties and have other powers and authority as may be conferred from time to time by the Authority in accordance with law.

4.5 Secretary. The Secretary shall be responsible for ensuring that the minutes of Authority meetings and meetings of its committees are subscribed correctly and presented to the Board for approval. The Secretary shall attest by signature whenever required. Any other officer may attest by signature in the absence of the Secretary. The Secretary shall perform other

duties commonly incident to the office and shall perform other duties and have other powers and authority as may be conferred from time to time by the Authority in accordance with law.

4.6 Treasurer. The Treasurer shall perform duties commonly incident to the office and shall perform duties and have other powers and authority as may be conferred from time to time by the Authority in accordance with law.

4.7 Removal from Office. Any officer may be removed from office (but not from membership on the Authority if a member) by the Authority at any time.

Article V Committees

5.1 Committees. The Authority may establish such special and standing committees as it deems desirable to assist in conducting its business which shall serve with duties as determined by the Authority. Committees will make recommendations to the Authority and shall prepare reports on matters pertaining to assignments as directed by the Authority. Any such committees may be abolished in the discretion of the Authority.

(a) **Executive Committee.** The voting members of the committee shall be the officers of the Authority, who shall serve at the pleasure of the Authority. The Executive Director shall be a non-voting member of the committee. Other parties may attend a committee meeting by invitation as a non-voting invitee. The committee shall convene regular monthly or quarterly meetings and shall convene special meetings as necessary pursuant to the notice requirements of the North Carolina Open Meetings Act. The committee shall set and timely publish an agenda for all meetings, soliciting input from other Authority members, the Authority staff, and the public. The committee shall consult regularly with other members of the Authority who have expertise or interest in specific topics or issues on the agenda. The committee is authorized to issue press releases or make statements to the public media regarding all Authority matters. All committee appointments, other than appointments to the Executive Committee, shall be made by the Executive Committee. The committee shall appoint any required task forces, which may be comprised of Authority members and non-members. The committee is entrusted with the broad discretion to make day-to-day decisions affecting all Authority operations and to deal with all legal issues affecting the Authority. The committee shall establish and execute a process to establish, review, and monitor the performance of the Executive Director, which process shall involve all members of the Authority to the appropriate extent in the evaluation process.

(b) Any additional committees as the Authority shall deem appropriate.

5.2 Membership. Committee members and chairpersons shall be appointed by the Executive Committee. The Executive Committee may in its discretion delegate the appointment of committee chairpersons to the respective committees. Other than provided in Section 5.1, committee members need not be members of the Authority; however, committee chairpersons shall be members of the Authority.

5.3 Meetings and Quorum. Committee meetings shall be called by the committee chairperson or two other committee members. A majority of committee members present at a meeting shall constitute a quorum. The act of a majority of committee members present at a meeting having a quorum shall be the act of the committee.

5.4 Minutes. Each committee shall keep written minutes of its meetings and shall deliver a copy of these minutes to the Secretary of the Authority for distribution to the Authority. Minutes shall be made available to Authority members at least ten working days after adjournment.

5.5 Reports. Each committee chairperson shall report on its accomplishments to the Authority at each regular meeting. At least once a year, and no later than September 15th, each committee chairperson shall deliver to the Authority and Executive Director a written report of its work and accomplishments during the preceding fiscal year. These reports (or excerpts therefrom) shall be included in the annual report.

Article VI Administration

6.1 Executive Director; Budget Officer and Finance Officer. The Authority shall appoint an Executive Director who shall not be a member of the Authority and who shall serve at the pleasure of the Authority. The Executive Director shall devote his or her time to the Authority and shall not actively engage in any other business that will conflict with his or her primary duties to the Authority. The Executive Director shall be the Budget Officer and Finance Officer and shall have the powers and duties set forth in the North Carolina Local Government Budget and Fiscal Control Act. Subject to approval of the Board, the Executive Director may delegate Finance Officer responsibilities to another member of the staff, provided that final authority shall remain with the Executive Director to the extent required by the North Carolina Local Government Budget and Fiscal Control Act. The Authority shall pay the Executive Director such compensation as it deems necessary and advisable.

6.2 Duties of Executive Director. The Executive Director shall be responsible for the day-to-day operations of the Authority. The Executive Director shall attend meetings of the Authority and shall attend committee meetings when requested. The Executive Director shall make recommendations to the Authority for adoption of such resolutions, ordinances, rules, regulations, policies, procedures, guidelines and any other measures that he or she shall deem necessary and advisable for the efficient and proper administration of the operations of the Authority. The Executive Director shall be accountable to the Authority for the proper and efficient administration of the operations of the Authority and for the implementation and execution of resolutions, ordinances, rules, regulations, policies, procedures, guidelines and directives approved or adopted by the Authority. The Executive Director shall be responsible for preparing and presenting the annual report on the condition of the Authority at the annual meeting of the Authority and shall also deliver a copy to each participating subdivision. The Executive Director shall prepare the proposed annual budget ordinance and the capital improvement plan and submit these to the Authority for approval. The Executive Director shall be responsible for obtaining and furnishing to the Authority financial and other reports as may be required by the Authority. Except for those

persons appointed to positions by the Authority who shall serve at the pleasure of the Authority , the Executive Director shall employ all employees of the Authority in accordance with the adopted budget ordinance, organizational structure, Human Resources policies and within any pay and classification plan adopted by the Authority. The Executive Director shall supervise, discipline and discharge all employees of the Authority.

6.3. Clerk. The Board shall appoint a Clerk, who shall serve at the pleasure of the Board. The Clerk shall be officially responsible for subscribing the Minutes of all meetings of the Board and Board sub-committees. The Clerk shall be officially responsible for the Authority seal and retention of official records, including minutes, ordinances, resolutions, contracts, and Interlocal Agreements, in accordance with the North Carolina General Statutes. The Clerk shall prepare official copies of documents, including ordinances, resolutions, and meeting minutes as adopted by the Board and shall certify legal documents on behalf of the Authority. The Clerk shall be responsible for legal advertisements and the scheduling of Board meetings and Public Hearings.

6.4 Internal Auditor. The Board shall appoint an Internal Auditor, who shall serve at the pleasure of the Board. The Internal Auditor shall conduct audits of Authority departments and regulations as determined by the Board.

Article VII

Finances

7.1 Fiscal Control. The Authority is subject to the North Carolina Local Government Budget and Fiscal Control Act (Act). The Authority shall establish guidelines, policies and/or procedures for the efficient and sound fiscal management of the Authority not inconsistent with the Act.

7.2 Monthly Financial Statements. A monthly Statement of Net Assets (balance sheet), Statement of Revenues, Expenses and Change in Net Assets (income statement) and Statement of Revenues Expenditures, and other Funding Sources (Uses) (budget vs. actual) shall be submitted to the Authority by the Executive Director at each regular meeting of the Authority. The Authority may require other financial reports on a monthly, quarterly or other basis and may direct that reports contain information in such detail as it deems appropriate.

7.3 Fiscal Year. The fiscal year of the Authority shall commence on July 1 of each year and shall terminate on the following June 30.

Article VIII

Capital Improvement Plan and Permits

8.1 Capital Improvement Plan. The Authority shall adopt at least a 10-year capital improvement plan which shall be updated at least every other year. Immediately following its adoption, a copy of the capital improvement plan shall be forwarded to each participating political subdivision.

8.2 Permits. The Authority shall acquire and maintain in good standing operation permits from the State of North Carolina Division of Water Quality and any other applicable local, state or federal permits, licenses or certificates necessary for the operation of a consolidated water system and sewer system, and may include stormwater and other services as authorized by law if approved by the governing bodies of the County and City.

Article IX Execution of Documents

9.1 Execution of Documents. The Authority may, except as otherwise provided in these amended and restated bylaws or law, authorize any officer or the Executive Director, or any senior staff member to enter into any agreement or execute and deliver any written instrument of, and on behalf of, the Authority and any such grant of Authority may be general or confined to a specific instance. Unless so authorized by the Authority, no officer, member, agent, appointee, employee or the Executive Director shall have any power or authority to bind the Authority by any agreement or engagement, or pledge or its credit, or to render it liable in any way, monetary or otherwise, for any purpose or in any amount.

Article X Conflict of Interest

10.1 Conflict Defined. In addition to complying with the requirements of North Carolina law, no member shall participate in the hearing, consideration or determination of any matter in which he or she has a conflict of interest (conflict). A conflict exists when a member engages in any business or transaction or has a financial or other personal interest that is incompatible with the proper discharge of his or her official duties or would tend to impair his or her independence of judgment and action in the performance of his or her official duties. A conflict exists when any member:

- (a) Has a financial interest as owner, member, partner, officer, employer, stockholder or other participant in a private business or professional enterprise that will benefit from the outcome of any contract or business transaction with the Authority by such enterprise.
- (b) Has such interest in any matter which may be adverse to the public interest and the proper performance of his or her duties as a member.
- (c) Has an interest in speculative or investment activities that will benefit from use of confidential information obtained as a member.
- (d) Utilizes property, either real or personal, owned by the City, County or other participating political subdivision in any business venture or enterprise that results in private gain, monetary or otherwise, to such member.

10.2 Confidential Information. No member shall use or disclose confidential information concerning the property, government or affairs of the Authority for the purpose of advancing the financial or other private interest of himself or herself or others.

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10.3 Gifts and Favors. No member shall accept gifts, favors or anything of more than nominal value (e.g., \$25), whether in the form of service, loan, entertainment, material thing or promise, from any person who to his or her knowledge is interested directly or indirectly in any manner whatsoever in business dealings with the Authority. No member shall accept from any person any gifts, favors or anything of value that may tend to influence him or her in the discharge of his or her duties or tend to influence him or her in granting any improper service, favor or thing of value. If it is impossible or inappropriate to refuse a gift, then it shall be turned over to any appropriate public or charitable institution.

10.4 Appearance and Intervention on Behalf of Others. No member shall appear before the Authority or any of its committees, or intervene, on behalf of private interests in any matter that will be in conflict with his or her duties as a member. Any member may appear before the Authority or any of its committees in the course of the performance of civic obligations whenever no retainer, compensation or gifts shall be accepted in connection with such representation. Members shall not seek to influence a decision, participate in any action or cast a vote involving any matter that is likely to result in a personal and/or financial gain.

10.5 Application of Provisions. In applying the provisions set forth in sections 10.1 through 10.4 hereinabove, the following procedures shall govern:

(a) A member who determines there is a conflict shall declare to the Authority the existence of a conflict and its nature and shall request to be excused from the hearing, consideration or determination of the matter by the Authority. The Authority shall vote on whether any conflict exists and to excuse the member from voting.

(b) A member who believes that a conflict may exist on his/her part or the part of another member shall declare the possible conflict and its nature, and ask for a determination by the Authority. The Authority shall determine whether or not a conflict exists and excuse the member.

(c) If a member who has a conflict will not voluntarily seek to be excused by the Authority, the Authority shall make a determination as to whether a conflict exists and excuse the member.

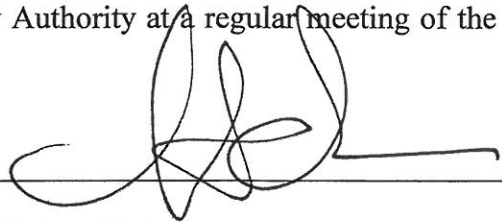
Article XI Amendments

11.1 Amendments. These amended and restated bylaws may be amended or repealed and new bylaws may be adopted by a three-fourths majority vote of the members at any regular or special meeting of the Authority upon thirty days written notice of such amendment.

Article XII
Severability

12.1 Saving Clause. If any section, subsection, paragraph, or part of these amended and restated bylaws is for any reason held unlawful or unconstitutional by any court of competent jurisdiction, such portion shall be deemed severable and such holding shall not affect the validity of the remaining portions of these amended and restated bylaws.

ADOPTED by the Cape Fear Public Utility Authority at a regular meeting of the Board held on the 9th day of October, 2013.

A handwritten signature in black ink, appearing to read 'James Quinn', is written over a horizontal line.

James Quinn, Chairman

ATTEST:

A handwritten signature in black ink, appearing to read 'James G. Brumit', is written over a horizontal line.

James G. Brumit, Secretary

