

**RESOLUTION OF THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF WEST ORANGE, IN THE COUNTY OF ESSEX, STATE OF NEW JERSEY (THE "LOCAL UNIT") AUTHORIZING AN EMERGENCY APPROPRIATION PURSUANT TO N.J.S.A. 40A:4-46 AND 40A:4-48 TO APPROPRIATE THE LOCAL UNIT'S ALLOCABLE SHARE OF THE UNFUNDED PORTION OF PHASE I OF THE FLOOD MITIGATION FACILITIES PROJECT OF THE JOINT MEETING OF ESSEX AND UNION COUNTIES IN AN AMOUNT NOT TO EXCEED \$2,520,361**

**WHEREAS**, the Township Council of the Township of West Orange, in the County of Essex, State of New Jersey (the "Local Unit"), desires to adopt a resolution providing for an emergency appropriation pursuant to N.J.S.A. 40A:4-46 and 40A:4-48 to appropriate the Local Unit's allocable share of the unfunded portion of Phase 1 of the Project (as hereinafter defined) in an amount not to exceed \$2,520,361; and

**WHEREAS**, the Joint Meeting of Essex and Union Counties (the "Joint Meeting") is organized and exists pursuant to the provisions of N.J.S.A. 40:63-68 et seq., and constitutes a public body corporate and politic of the State of New Jersey authorized to exercise essential public and governmental functions, and having all powers necessary or convenient to carry out and effectuate its corporate purposes; and

**WHEREAS**, on October 29, 2012, the Joint Meeting experienced floodwaters generated by Superstorm Sandy and high tide of over twelve feet; and

**WHEREAS**, because of the extraordinary tidal surge during the storm, floodwaters entered and inundated a number of locations within the Joint Meeting's treatment plant; and

**WHEREAS**, following Superstorm Sandy, the Joint Meeting's consulting general engineers, CME Associates, were retained to conduct a Facilities Flood Control Report to assess the damage caused by the flooding, to review possible modifications to be made to structures to prevent damage from future flooding, and to review alternative flood measures; and

**WHEREAS**, CME Associates also performed a Benefit Cost Analysis to determine the benefits of restoration and appropriate mitigation measures; and

**WHEREAS**, after both studies, CME Associates determined that it would be most beneficial to the Joint Meeting to protect the entire site from future flooding so as to prevent any future damage and to ensure the treatment of wastewater flows during any storm events; and

**WHEREAS**, the Executive Director, in conjunction with the Joint Meeting's General Consulting Engineer, developed a Flood Mitigation Facilities Project (as hereinafter defined)

for the Joint Meeting, that involves among other work, the construction of a reinforced concrete levee wall, installation of automatic vehicle flood gates, isolation of on-site stormwater collection systems and pumps, installation of an effluent pumping station, Cogeneration Upgrades, installation of a stormwater pumping station for the Biosolids Facility site, and the use of an existing Army Corps of Engineers Flood Control Pump Station at the treatment plant (collectively, the “Flood Mitigation Facilities Project”); and

**WHEREAS**, the Federal Emergency Management Agency, an agency of the United States of America, has indicated that it will reimburse approximately 90% of the costs associated with the Project and that only the remaining 10% of the costs will be financed by the member municipalities and the City of Elizabeth (collectively, the “Members”); and

**WHEREAS**, the funding commitment from the Federal Emergency Management Agency may be provided in multiple phases; and

**WHEREAS**, the Joint Meeting covenanted to the Members that the Flood Mitigation Facilities Project will be financed in phases as each phase is approved by FEMA; and

**WHEREAS**, in September of 2020, FEMA approved Phase I of the Flood Mitigation Facilities Project consisting of the construction of an Effluent Pumping Station, which will be connected to the existing twin outfall channels to the Arthur Kill (“Phase I of the Project”); and

**WHEREAS**, in October, 2020, the Local Unit issued and sold Construction Loan Financing Program Notes to the New Jersey Infrastructure Bank (the “I-Bank”) in the amount of \$2,405,000 to finance its allocable share of Phase I of the Project (the “2020 I-Bank Note”); and

**WHEREAS**, Phase I of the Project has experienced delays due to many factors, including but, not limited to, delays in receiving approval of the New Jersey Department of Environmental Protection, the financing process, and, primarily, as a result of the COVID-19 pandemic; and

**WHEREAS**, due to these delays, the Joint Meeting did not solicit and receive bids on Phase I of the Project until July of 2022; and

**WHEREAS**, the bids received for Phase I of the Project were substantially more than originally projected and more than the \$21,392,365 amount that was financed through the I-Bank by the Members through their respective 2020 I-Bank Notes; and

**WHEREAS**, in order to execute a contract with the lowest responsible bidder and lock in construction costs for Phase I of the Project, the Joint Meeting will need to have access to an additional \$31,361,958; and

**WHEREAS**, N.J.S.A. 40A:4-46 permits local governments to make emergency appropriations, after adoption of the annual budget, for purposes unforeseen at the time of adoption thereof; and

**WHEREAS**, the emergency appropriation shall be provided in full as a deferred charge in the succeeding year's budget of the Local Unit, except to the extent that provision for paying, funding or refunding the emergency appropriation or the financing of the expenditures pursuant thereto shall previously have been made by the authorization of bonds pursuant to N.J.S.A. 40A:2-3; and

**WHEREAS**, the Local Unit will finance the emergency appropriation via the adoption of a bond ordinance prior to the adoption of the Local Unit's 2023 municipal budget; and

**WHEREAS**, the emergency appropriation is being made to meet a pressing need for public expenditure to protect or promote the public health, safety, morals or welfare of the residents of the Local Unit and is necessary for the protection and efficient operation of the Joint Meeting's wastewater system; and

**WHEREAS**, the total amount of the Local Unit's emergency appropriations created in calendar year 2022, including the appropriation to be created by this resolution, is \$2,520,361 and three percent (3%) of the total current and utility operating appropriations in the budget of the Local Unit for the year ending December 31, 2022 is \$2,657,391.52; and

**WHEREAS**, the foregoing emergency appropriation together with prior emergency appropriations of the Local Unit does not exceed three percent (3%) of the total current and utility operating appropriations in the budget adopted of the Local Unit for the year ending December 31, 2022.

**NOW, THEREFORE, BE IT RESOLVED** by the governing body of the Local Unit (by not less than 2/3 of all governing body members affirmatively concurring) in accordance with N.J.S.A. 40A:4-48, AS FOLLOWS:

**Section 1.** The above recitals are incorporated herein as though fully set forth at length.

**Section 2.** The Local Unit hereby declares that an emergency exists requiring a supplementary appropriation

**Section 3.** An emergency appropriation in the amount of \$2,520,361 is hereby authorized and made for the purpose of appropriating the Local Unit's allocable share of the unfunded portion of Phase 1 of the Project, which was not a known or foreseen amount at the time of the adoption of the calendar year 2022 fiscal budget and, thus, an adequate provision for such cost was not made in said budget. The emergency appropriation is being made to meet a pressing need for public expenditure to protect or promote the public health, safety, morals or welfare of residents of the Local Unit and is necessary for the protection and efficient operation of the Joint Meeting's wastewater system. Due to the fact that no adequate provision was made in the budget for the year ended December 31, 2022 for the aforesaid purpose, N.J.S.A. 40A:4-46 provides for the creation of an emergency appropriation for the above referenced purpose.

**Section 4.** The emergency appropriation shall be paid or funded by the Local Unit as a deferred charge in the budget for the fiscal year ending December 31, 2023 except, to the extent, if any, said emergency appropriation is paid or funded through the authorization of bonds or notes as an appropriation authorized by law pursuant to N.J.S.A. 40A:2-3. The Local Unit shall finance the emergency appropriation via the adoption of a bond ordinance prior to the adoption of the Local Unit's 2023 budget. The Local Unit hereby requests, if necessary, the emergency appropriation to be excluded from CAPS, pursuant to N.J.S.A. 40A:4-45.4(c)(1).

**Section 5.** Two (2) certified copies of this resolution shall be filed with the Director of the Division of Local Government Services and a certified copy of this resolution shall be filed with the Clerk of the Local Unit and with Everett M. Johnson, Esq., Wilentz, Goldman & Spitzer, P.A., bond counsel to the Joint Meeting.

**Section 6.** This resolution shall take effect immediately.

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**Karen J. Carnevale, R.M.C.**  
**Municipal Clerk**

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**Susan McCartney**  
**Council President**

**Adopted: October 11, 2022**

**CERTIFICATION**

I, KAREN J. CARNEVALE, Clerk of the Township of West Orange, in the County of Essex, State of New Jersey (the "Local Unit"), DO HEREBY CERTIFY that the annexed resolution entitled, "RESOLUTION OF THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF WEST ORANGE, IN THE COUNTY OF ESSEX, STATE OF NEW JERSEY ("THE LOCAL UNIT") AUTHORIZING AN EMERGENCY APPROPRIATION PURSUANT TO N.J.S.A. 40A:4-46 AND 40A:4-48 TO APPROPRIATE THE LOCAL UNIT'S ALLOCABLE SHARE OF THE UNFUNDED PORTION OF PHASE I OF THE FLOOD MITIGATION FACILITIES PROJECT OF THE JOINT MEETING OF ESSEX AND UNION COUNTIES IN AN AMOUNT NOT TO EXCEED \$2,520,361", is a copy of a resolution which was duly adopted by the Local Unit at a meeting duly called and held on October 11, 2022 in full compliance with the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., at which meeting a quorum was present and acting throughout, and which resolution has been compared by me with the original thereof as contained in the minutes as officially recorded in my office in the Minute Book of the governing body of the Local Unit, and is a true, complete and correct copy thereof and of the whole of the original minutes so far as they relate to the subject matters referred to within, and aforesaid resolution has not been repealed, amended or rescinded but remains in full force and effect on and as of the date hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the Local Unit as of this \_\_\_\_ day of October, 2022

(SEAL)

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KAREN J. CARNEVALE, R.M.C.  
Clerk

**AFFIDAVIT OF THE  
CHIEF FINANCIAL OFFICER OF THE LOCAL UNIT  
PURSUANT TO N.J.S.A. 40A:4-52**

I, JOHN GROSS, Chief Financial Officer of the Township of West Orange, in the County of Essex, State of New Jersey (the "Local Unit"), hereby make the following certification pursuant to the provisions of N.J.S.A. 40A:4-52. Accordingly, I DO HEREBY CERTIFY to the following:

1. Purpose of Emergency Appropriation - An emergency appropriation in the amount of \$2,520,361 is hereby authorized and made to appropriate the Local Unit's allocable share of the unfunded portion of Phase 1 of the Flood Mitigation Facilities Project of the Joint Meeting of Essex and Union Counties (the "Joint Meeting") consisting of the construction of an Effluent Pumping Station, which will be connected to the existing twin outfall channels to the Arthur Kill ("Phase I of the Project"). Phase I of the Project has experienced delays due to many factors, including but, not limited to, delays in receiving approval of the New Jersey Department of Environmental Protection, the financing process, and, primarily, as a result of the COVID-19 pandemic. Due to these delays, the Joint Meeting did not solicit and receive bids on Phase I of the Project until July of 2022. The bids received for Phase I of the Project were substantially more than originally projected and more than the \$21,392,365 amount that was financed through the New Jersey Infrastructure Bank (the "I-Bank") by the Members and the Township of Elizabeth through their respective construction financing program notes issued in 2020. In order to execute a contract with the lowest responsible bidder and lock in construction costs for Phase I of the Project, the Joint Meeting will need to have access to an additional \$31,361,958 of which the Local Unit's allocable share is \$2,520,361. The total cost to the Local Unit of the emergency appropriation was not a known or foreseen amount at the time of the adoption of the current year's fiscal budget and an adequate provision for such cost was not made in said budget. The emergency appropriation is being made to meet a pressing need for public expenditure to protect or promote the public health, safety, morals or welfare of residents of the Local Unit and is necessary for the protection and efficient operation of the Joint Meeting's wastewater system. Due to the fact that no adequate provision was made in the Local Unit's budget for the year ended December 31, 2022 for the aforesaid purpose, N.J.S.A. 40A:4-46 provides for the creation of an emergency appropriation for aforesaid purpose.

2. Total Appropriations - The total amount of the emergency appropriations created in calendar year 2022, including the emergency appropriation to be created by this resolution, is \$2,520,361 and three percent (3%) of the total current and utility operating appropriations in the budget for the calendar year ending December 31, 2022 is \$2,657,391.52. The total current operating and utility appropriations of the Local Unit for calendar year 2022 are \$88,579,717.31.

3. Contracts - No contracts have been awarded or purchase orders placed in connection with this emergency appropriation.

IN WITNESS WHEREOF, I have hereunto set my hand as of this \_\_ day of October, 2022.

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**JOHN GROSS,**  
**Chief Financial Officer**