

RESOLUTION NO. 0041-2017

**RESOLUTION OF THE BERKELEY TOWNSHIP  
MUNICIPAL UTILITIES AUTHORITY AUTHORIZING  
THE ISSUANCE AND SALE OF NOT TO EXCEED  
\$2,000,000 PRINCIPAL AMOUNT OF A PROJECT NOTE  
RELATING TO THE CONSTRUCTION FINANCING  
TRUST LOAN PROGRAM OF THE NEW JERSEY  
ENVIRONMENTAL INFRASTRUCTURE TRUST AND  
DETERMINING VARIOUS MATTERS RELATING  
THERE TO**

**DATED: OCTOBER 26, 2017**

WHEREAS, the Berkeley Township Municipal Utilities Authority (the "Authority") adopted a resolution entitled, "Resolution Authorizing the Issuance of Revenue Bonds of The Berkeley Township Municipal Utilities Authority", adopted on February 16, 2017 (the "General Bond Resolution," and as amended and supplemented, the "Bond Resolution"), providing for, among other things, the construction, acquisition, improvement or replacement of all or any part of the System and the issuance of obligations to provide for the payment of the costs therefore; and

WHEREAS, the Authority has submitted to the New Jersey Department of Environmental Protection (the "DEP") and the New Jersey Environmental Infrastructure Trust (the "Trust") applications for of a new water supply well (Well #4) (the "Well Project"), all as more particularly described in plans which are on file in the offices of the Authority, and costs of issuance; and

WHEREAS, in accordance with the provisions of the General Bond Resolution, the Authority adopted Resolution 2013-76 on December 19, 2013 (the "2013 Subordinated Bond Resolution"), the Authority adopted a resolution authorizing the issuance of Subordinated Water Revenue Bonds for two projects for, among other things, the Well Project, to be issued pursuant to the Trust's Environmental Infrastructure Financing Program (the "Construction Financing Program"); and

WHEREAS, the Trust and the DEP required the Authority to bifurcate the Well Project into two projects, one for a test well (the "Test Well Project") and one for the production well (the "Production Well Project"); and

WHEREAS, the Authority proceeded with the Test Well Project, which was financed by the issuance of a temporary note to the Trust (the "Test Well Project Note") through the Construction Financing Program; and

WHEREAS, the Test Well Project is complete, and the Authority has determined that there exists a need to construct, renovate and install the Production Well Project, and it is the desire of the Authority to obtain financing for the Production Well Project through the Construction Financing Program; and.

WHEREAS, in order to participate in the Trust's Construction Financing Program, the Authority intends to issue its subordinated bonds pursuant to one or more supplemental subordinated bond resolutions, to provide for, among other things, (1) the financing of the Test Well Project and the Production Well Project; (2) to provide security for loan(s) from the New Jersey Environmental Infrastructure Trust and the State; and (3) the payment of the costs associated with the issuance of such bonds; and

WHEREAS, the Authority has determined to temporarily finance the construction, renovation or installation of the Production Well Project prior to the bond closing, and to undertake such temporary financing with the proceeds one or more interim loans to be made by the Trust (the "Construction Loan") to the Authority, pursuant to the Construction Financing Program; and

WHEREAS, in order to (i) finance the costs of the Production Well Project, (ii) evidence and secure the repayment obligation of the Authority to the Trust with respect to the Construction Loan and (iii) satisfy the requirements of the Construction Financing Program, it is the desire of the Authority to issue and sell to the Trust the "Project Note Relating to the Construction Financing Trust Loan Program of the New Jersey Environmental Infrastructure Trust" in an aggregate principal amount of up to \$2,000,000 (the "Note"); and

WHEREAS, it is the desire of the Authority to authorize, execute, attest and deliver the Note to the Trust pursuant to the terms of the Municipal Utilities Authorities Law (codified at N.J.S.A. N.J.S.A. 40:14B-1 *et seq.*, as the same may from time to time be amended and supplemented) (the "Authority Enabling Act") and the "Local Authorities Fiscal Control Law", constituting Chapter 313 of the Pamphlet Laws of 1983 of the State of New Jersey (codified at N.J.S.A. 40A:5A-1 *et seq.*), as the same may from time to time be amended and supplemented (the "Local Authorities Fiscal Control Law"); and

WHEREAS, the Authority Enabling Act and N.J.S.A. 58:11B-9 each allow for the sale of the Note to the Trust, without any public offering, all pursuant to the terms and conditions set forth therein; and

WHEREAS, the Note and the Test Well Project Note are anticipated to be permanently financed by the Authority at some time in the future pursuant to the terms of a subordinated bond resolution with one or more series of Subordinated Water Revenue Bonds; and

WHEREAS, the Authority desires to set forth certain terms relating to the issuance of Note pursuant to this resolution.

NOW, THEREFORE BE IT RESOLVED by the Berkeley Township Municipal Utilities Authority, as follows:

SECTION 1. In accordance with the Authority Enabling Act and N.J.S.A. 58:11B-9, in order to provide funds with which to provide for the financing of the Production Well Project and in anticipation of the application of the proceeds of the issuance and sale of long-term subordinated

bonds of the Authority issued for such purpose, the Authority hereby determines to borrow a sum not to exceed Two Million Dollars (\$2,000,000) and to issue its negotiable project notes in one or more series in the principal amount not exceeding said sum (herein called the "Note"). The obligation represented by the Note has been authorized by this Resolution, the Authority Enabling Act and other applicable law.

SECTION 2. The Note shall be designated "Project Note Relating to the Construction Financing Trust Loan Program of the New Jersey Environmental Infrastructure Trust," and shall contain such other or additional designation as may be determined by the Executive Director of the Authority (the "Executive Director"). Said Note may be sold at one time or in blocks from time to time as may be determined by the Executive Director. The Executive Director is hereby authorized to determine pursuant to the terms and conditions of this Resolution (i) the final principal amount of the Notes (subject to the maximum limitation set forth in Section 3(a) hereof) and (ii) the dated date of the Note. Any determination made by the Executive Director pursuant to the terms hereof shall be conclusively evidenced by the execution and attestation of the Notes by the parties authorized pursuant to Section 4 hereof. Any determination made by the Executive Director pursuant to the terms hereof shall be conclusively evidenced by the execution and attestation of the Note by the parties authorized pursuant to Section 4 hereof.

SECTION 3. The Authority hereby determines that certain terms of the Note shall be as follows:

- (a) the principal amount of the Note to be issued shall be an amount up to \$2,000,000;
- (b) the maturity of the Note shall be as determined by the Trust, but not later than June 30, 2021;
- (c) the interest rate of the Note shall be as determined by the Trust;
- (d) the purchase price for the Note shall be par;
- (e) the Note shall be subject to prepayment prior to its stated maturity in accordance with the terms and conditions of the Note;
- (f) the Note shall be issued in a single denomination and shall be numbered "CFP-01";
- (g) the Note shall be issued in fully registered form and shall be payable to the registered owner thereof as to both principal and interest in lawful money of the United States of America.

SECTION 4. The Note shall be signed in the name of the Authority by the manual or facsimile signature of the Chairman, Vice Chairman or Secretary of the Authority and shall have the seal of the Authority (or a facsimile thereof) impressed, imprinted or otherwise reproduced thereon and attested by the manual signature of the Chairman, Vice Chairman, Executive Director or Secretary of the Authority (hereinafter called "Authorized Officers").

SECTION 5. The Note shall be issued in substantially the form of the Note attached hereto as Exhibit A with such changes therein or variations thereof as an Authorized Officer, in consultation with bond counsel to the Authority (“Bond Counsel”), may deem necessary and advisable. The law firm of GluckWalrath LLP is hereby authorized to arrange for the printing of the Note, which law firm may authorize McCarter & English, LLP, bond counsel to the Trust for the Interim Financing Program, to arrange for same.

SECTION 6. The Note shall constitute a direct and special obligation of the Authority payable out of and secured by a pledge of amounts which may be withdrawn from the General Fund pursuant to the terms of the Bond Resolution. The pledge in this Section 6 to holders of the Note is subordinate and subject to any agreements the Authority has with holders of any particular notes, bonds or obligations heretofore issued and pledging specific revenues for the payment thereof. In addition, without limiting the foregoing obligation, for the punctual payment of the principal of and interest on said Note, the Authority hereby expressly and irrevocably promises to pay such sums received from the sale of long-term bonds or other obligations to be issued by the Authority to permanently finance the Production Well Project as shall be sufficient to pay the principal of and interest on the Note; however, in the event that long-term bonds or obligations are not issued for any reason, the Authority agrees to charge and collect Service Charges (as defined in the Bond Resolution) in an amount sufficient to pay the principal of and interest on the Note. The Note shall also be entitled to the benefits of the Service Contract dated April 1, 1975 between the Authority and the Township of Berkeley, County of Ocean, New Jersey, as amended. The Authority shall not issue any future obligations (bonds or notes) to a bondholder or noteholder other than the Trust or the State of New Jersey that are payable from the General Fund, unless it establishes an intercreditor relationship that is acceptable to the Trust.

SECTION 7. The Authority hereby appoints TD Bank, National Association, Cherry Hill, New Jersey, as the trustee, paying agent and registrar for the Note (the “Paying Agent”). The proceeds derived from the sale of the Note shall be deposited with and held by the Paying Agent in an account herein created and established in that bank designated “Construction Financing Trust Loan Program Project Note Account” (the “Project Note Account”). Monies so deposited in said Project Note Account shall be used and applied solely for the purpose of (i) paying the costs of the Production Well Project and (ii) paying the costs of issuance of the Note. Monies shall be withdrawn from the Project Note Account from time to time for any of such purposes upon checks, drafts or orders for payments therefrom, signed by an Authorized Officer.

Pending the application of the monies deposited in the Project Note Account to fund the Production Well Project, to the extent any funds are advanced prior to payment, such monies shall be invested and reinvested by the Paying Agent on behalf of the Authority in direct obligations of the United States of America or the State of New Jersey, or obligations the principal of and interest on which are guaranteed by the United States of America or agencies of the United States of America. The monies in the Project Note Account to be so invested, and the maturity date or dates, or date or dates of redemption at the option of the holders of such obligations, shall be such as an Authorized Officer shall direct the Paying Agent in writing.

In lieu of the investment of such monies in obligations of the State of New Jersey or the United States of America or agencies thereof, as aforesaid, the Paying Agent shall, upon direction of the Authority in writing, signed by an Authorized Officer, deposit monies from the Project Note Account in interest-bearing time deposits, provided further that each such interest-bearing time deposit or other similar banking arrangement shall permit the monies so placed to be available for use at the times provided with respect to the investment or reinvestment of such monies; and provided further that all monies in each such interest-bearing time deposit or other similar banking arrangement shall be, except to the extent of federal deposit insurance, continuously and fully secured by direct obligations of the United States of America, the State of New Jersey or the Authority, of a market value equal at all times to the amount of the deposit or of the other similar banking arrangement.

SECTION 8. With respect to the Note, the Authority covenants and agrees as follows:

(1) It shall neither take any action nor fail to take any action which, if either taken or not taken, would adversely affect the exclusion of the interest on the Note from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"), as if issued on a tax-exempt basis. To the extent permitted by law, however, nothing contained herein shall prevent the Authority from issuing bonds, the interest on which is not excluded from gross income for federal income tax purposes, provided that such issuance will not adversely affect such exclusion of interest on any Note issued hereunder (as if issued on a tax-exempt basis).

(2) The Authority shall not use or permit the use of any proceeds of the Note or any other funds of the Authority, directly or indirectly, to acquire securities or obligations, and shall not use or permit the use of any amounts received by the Authority in any manner, and shall not permit to be taken any other action or actions, which would cause any Note to be an "arbitrage bond" within the meaning of Section 148 of the Code. In order to assure compliance with the rebate requirements of Section 148 of the Code, the Authority further covenants that it will establish such accounting procedures as are necessary to adequately determine, account for and pay over any amount or amounts required to be paid to the Treasury Department of the United States in a manner consistent with the requirements of Section 148 of the Code.

(3) The Authority shall not be required to comply with any provision in this Section 7 in the event the Authority receives a Bond Counsel's Opinion that compliance therewith is not required to maintain the exclusion from gross income for federal income tax purposes of interest on the Note (as if issued on a tax-exempt basis), or in the event the Authority receives a Bond Counsel's Opinion that compliance with some other requirement in lieu of a requirement specified herein will be sufficient to maintain the exclusion from gross income for federal income tax purposes of interest on the Note, in which case compliance with such other requirement specified in the Bond Counsel's Opinion shall constitute compliance with the requirement specified in this Section.

SECTION 9. If the Authority shall pay, or shall deposit in escrow with a bank or trust company, monies or investments in direct obligations of the United States of America, or

obligations the principal of and interest on which are guaranteed by the United States of America, the principal of and interest on which when due will provide monies which together with the monies, if any, on deposit in escrow at the same time, shall be sufficient to pay, when due, the principal and interest due and to become due on the Note on the maturity date thereof, then and in that event, the covenants, agreements and other obligations of the Authority to the holders of the Note shall be discharged, defeased and satisfied.

SECTION 10. Nothing contained in the foregoing provisions of this resolution is intended to limit, nor shall be construed as limiting, in any way, the authorization, issuance or securing of any additional notes, bonds or other obligations of the Authority.

SECTION 11. All covenants, stipulations, promises, agreements and obligations of the Authority contained in this resolution shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Authority and not of any member, officer or employee of the Authority in his individual capacity, and no recourse shall be had for the payment of the principal of or interest on the Note s or for any claim based thereon or on this Resolution against any member, officer or employee of the Authority or any person executing said Note.

SECTION 12. The Authorized Officers of the Authority are hereby further authorized to (i) execute and deliver, and the Secretary is hereby further authorized to attest to such execution and to affix the corporate seal of the Authority to, any document, instrument or closing certificate deemed necessary, desirable or convenient by the Executive Director or the Secretary, as applicable, in their respective sole discretion, after consultation with counsel and any advisors to the Authority and after further consultation with the Trust and its representatives, agents, counsel and advisors, to be executed in connection the issuance and sale of the Note and the participation of the Authority in the Interim Financing Program, which determination shall be conclusively evidenced by the execution of each such certificate or other document by the party authorized hereunder to execute such certificate or other document, (ii) publish notice of the adoption of this resolution in accordance with N.J.S.A. 40:14B-28 substantially in the form attached hereto as Exhibit B, and (iii) perform such other actions as the Executive Director and the Secretary deem necessary, desirable or convenient in relation to the execution and delivery of the Note and the participation of the Authority in the Interim Financing Program. Cost of issuance of the Note are hereby authorized to be paid in such amounts and to the persons or firms listed on a certificate executed by an Authorized Officer and delivered in connection with the issuance of the Note.

SECTION 13. Upon the adoption hereof, the Secretary shall forward certified copies of this resolution to GluckWalrath LLP, bond counsel to the Authority, to David Zimmer, Executive Director of the Trust, and to Richard T. Nolan, Esq., McCarter & English, LLP, bond counsel to the Trust.

SECTION 14. Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Bond Resolution.

SECTION 15. This Resolution shall take effect immediately.

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I certify that the foregoing is a true and correct copy of a resolution duly passed and adopted at a meeting of The Berkeley Township Municipal Utilities Authority held on the 26<sup>th</sup> day of October, 2017.



Secretary

Edward F. Cammarato

# 2018 AUTHORITY BUDGET RESOLUTION

## Berkeley Township Municipal Utilities Authority

(Name)

**FISCAL YEAR:** FROM: January 1, 2018 TO: December 31, 2018

WHEREAS, the Annual Budget and Capital Budget for the Berkeley Township Municipal Utilities Authority for the fiscal year beginning, January 1, 2018 and ending, December 31, 2018 has been presented before the governing body of the Berkeley Township Municipal Utilities Authority at its open public meeting of October 26, 1017; and

WHEREAS, the Annual Budget as introduced reflects Total Revenues of \$ 2,287,000, Total Appropriations, including any Accumulated Deficit if any, of \$ 2,290,674 and Total Unrestricted Net Position utilized of \$3,674 ; and

WHEREAS, the Capital Budget as introduced reflects Total Capital Appropriations of \$2,211,000 and Total Unrestricted Net Position planned to be utilized as funding thereof, of \$211,000; and total debt authorization planned to be issued as funding thereof totaling \$2,000,000; and

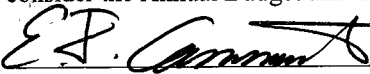
WHEREAS, the schedule of rates, fees and other charges in effect will produce sufficient revenues, together with all other anticipated revenues to satisfy all obligations to the holders of bonds of the Authority, to meet operating expenses, capital outlays, debt service requirements, and to provide for such reserves, all as may be required by law, regulation or terms of contracts and agreements; and

WHEREAS, the Capital Budget/Program, pursuant to N.J.A.C. 5:31-2, does not confer any authorization to raise or expend funds; rather it is a document to be used as part of the said Authority's planning and management objectives. Specific authorization to expend funds for the purposes described in this section of the budget, must be granted elsewhere; by bond resolution, by a project financing agreement, by resolution appropriating funds from the Renewal and Replacement Reserve or other means provided by law.

NOW, THEREFORE BE IT RESOLVED, by the governing body of the Berkeley Township Municipal Utilities Authority, at an open public meeting held on October 26, 2017 that the Annual Budget, including all related schedules, and the Capital Budget/Program of the Berkeley Township Municipal Utilities Authority for the fiscal year beginning, January 1, 2018 and ending, December 31, 2018 is hereby approved; and

BE IT FURTHER RESOLVED, that the anticipated revenues as reflected in the Annual Budget are of sufficient amount to meet all proposed expenditures/expenses and all covenants, terms and provisions as stipulated in the said Authority's outstanding debt obligations, capital lease arrangements, service contracts, and other pledged agreements; and

BE IT FURTHER RESOLVED, that the governing body of the Berkeley Township Municipal Utilities Authority will consider the Annual Budget and Capital Budget/Program for adoption on December 28, 2017.

  
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 Edward F. Cammarato, Secretary

October 26, 2017  
 (Date)

Governing Body	Recorded Vote			
Member:	Aye	Nay	Abstain	Absent
Karen Davis, Chairwoman	X			
Edward F. Cammarato, Secretary	X			
Kevin Askew, Commissioner				X
Michael W. Hale, Commissioner	X			
Lloyd G. Mullikin, Commissioner	X			
Richard Elliott, Alt. Commissioner				X