

2012-09

**FOURTH SUPPLEMENTAL RESOLUTION  
AUTHORIZING THE ISSUANCE OF  
WATER REVENUE BONDS, SERIES 2012G,  
WATER REVENUE BONDS, SERIES 2012H  
AND  
WATER REVENUE PROJECT NOTES**

WHEREAS, The Southeast Monmouth Municipal Utilities Authority (the "Authority") has been duly created by virtue of parallel ordinances of the governing bodies of the Borough of Brielle, the Borough of Sea Girt, the Borough of Spring Lake, the Borough of Spring Lake Heights and the Township of Wall (each individually, the "Municipality" or collectively, the "Municipalities"), each in the County of Monmouth, New Jersey, as a public body corporate and politic of the State of New Jersey pursuant to the terms of the Municipal and County Utilities Authorities Law, constituting Chapter 183 of the Laws of New Jersey of 1957, as amended and supplemented; and

WHEREAS, the Authority desires to, among other things, undertake the construction of a new two (2) million gallon water storage tank and the replacement, acquisition and installation, as applicable, of two (2) caustic soda tanks, two (2) zinc orthophosphate tanks and delivery system, two (2) clarithickeners, one (1) equalization tank and a filter to waste piping and improvements to the recycle lagoon system (including the installation of a third recycle lagoon) and the electrical system (collectively, the "Project"); and

WHEREAS, the total cost of the Project shall be approximately \$8,387,373 and the Authority's source for the permanent payment for the cost of the Project, and additional financing costs, is the Authority's issuance of Water Revenue Bonds or Project Notes in an aggregate principal amount not to exceed \$8,600,000 (the "Bonds/Project Notes"), through the New Jersey Environmental Infrastructure Trust's (the "NJEIT") financing program (the "NJEIT Program") and the associated water purchase contracts for such Bonds/Project Notes; and

WHEREAS, the Project Notes shall be issued to temporarily finance the Project until the Authority permanently finances the Project through the issuance of Bonds that shall consist of two separate series including Water Revenue Bonds, Series 2012G and Water Revenue Bonds, Series 2012H; and

WHEREAS, the Authority duly adopted on March 26, 2009 a resolution entitled, "Resolution Authorizing the Issuance of Revenue Bonds of The Southeast Monmouth Municipal Utilities Authority" (the "General Bond Resolution"); and

WHEREAS, Sections 317 and 318 of the General Bond Resolution authorizes the issuance by the Authority, from time to time, of its revenue bonds, in one or more series, for the authorized purposes of the Authority; and

WHEREAS, the General Bond Resolution provides that bonds of the Authority shall be authorized and issued pursuant to a Supplemental Resolution; and

WHEREAS, the Authority deems it necessary and advisable and in keeping with its purposes to issue under the General Bond Resolution, as amended by the First Supplemental Resolution duly adopted by the Authority on March 26, 2009, the Second Supplemental Resolution duly adopted by the Authority on July 2, 2009 and the Third Supplemental Resolution duly adopted by the Authority on July 2, 2009 (collectively, the "General Bond Resolution"), and this Fourth Supplemental Resolution, the Bonds or the Project Notes herein authorized for the purpose of (a) undertaking the Project, (b) funding a Bond Reserve Fund for the Series 2012G Bonds, the Series 2012H Bonds or the Project Notes, respectively, to the extent required, and (c) paying the costs of issuance incurred in connection with the offering and sale of the Bonds or the Project Notes; and

WHEREAS, the Authority will require the provision of certain professional services and will incur certain expenses with reference to the proposed project financing in conjunction with the Project; and

WHEREAS, the appointment, award and approval of professional services and expenses in connection with the Project as hereinafter made are exempt from the public bidding requirements of the Local Public Contracts Law, N.J.S.A. 40A:11-1, et seq.; and

WHEREAS, the Authority has conducted a nonfair and open or fair and open process for the procurement, approval and award, as applicable, of certain professional services and expenses for the financing; and

WHEREAS, the Authority has heretofore qualified and/or appointed certain parties to provide professional services and/or other services; and

WHEREAS, the Authority now desires to authorize certain actions and approve certain documents necessary in connection with the undertaking of the Project and the issuance of the Bonds/Project Notes.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE SOUTHEAST MONMOUTH MUNICIPAL UTILITIES AUTHORITY as follows:

## **ARTICLE I**

### **Definitions and Statutory Authority**

Section 1.01. Fourth Supplemental Resolution. This "Fourth Supplemental Resolution Authorizing the Issuance of Water Revenue Bonds, Series 2012G, Water Revenue Bonds, Series 2012H and Water Revenue Project Notes" (the "Fourth Supplemental Resolution") constitutes a Supplemental Resolution within the meaning of, and is adopted in accordance with Sections 317, 318, 801 and 802 of the General Bond Resolution.

Section 1.02. Definitions. Unless otherwise defined herein, all terms which are defined in Section 101 of the General Bond Resolution shall have the same meanings, respectively, in this Fourth Supplemental Resolution as such terms are given in said Section 101 of the General Bond Resolution.

## ARTICLE II

### **Authorization, Terms and Issuance of Water Revenue Bonds, Series 2012G, Water Revenue Bonds, Series 2012H and Water Revenue Project Notes**

Section 2.01. Authorization of Series 2012G Bonds, Series 2012H Bonds and Project Notes, Principal Amount, Designation and Series. Series of Bonds or Project Notes entitled to the benefit, protection and security of the General Bond Resolution are hereby authorized to be issued in an aggregate principal amount not to exceed \$8,600,000 and will consist of Water Revenue Bonds, Series 2012G (the "Series 2012G Bonds"), at a market tax-exempt interest rate, maturing in the years 2014 through 2032, Water Revenue Bonds, Series 2012H (the "Series 2012H Bonds"), at zero interest, maturing in the years 2013 through 2032, Water Revenue Project Notes (the "Project Notes"), at zero interest, maturing in the year in which the Series 2012G Bonds and Series 2012H Bonds are issued pursuant to and subject to the terms, conditions and limitations established in the General Bond Resolution and this Fourth Supplemental Resolution.

Section 2.02. Purposes. The purposes for which the Bonds/Project Notes are being issued are (a) to undertake the Project (b) to fund a Bond Reserve Fund for the Series 2012G Bonds, the Series 2012H Bonds or the Project Notes, respectively, to the extent required, and (c) to pay the costs of issuance incurred in connection with the offering and sale of the Bonds or the Project Notes

Section 2.03. Delegation of Authority. There is hereby delegated to an Authority Officer (as defined in the General Bond Resolution), subject to the limitations contained herein, in the Act (as defined below) and in the General Bond Resolution, the power with respect to each Series of the Bonds or Project Notes to determine and carry out the following:

(a) The sale of the Bonds/Project Notes at private sale through the NJEIT Program and the execution of the loan agreements and all documents on behalf of the Authority to reflect the sale and purchase of the Bonds or Project Notes in accordance herewith;

(b) The principal amount of each Series of the Bonds/Project Notes to be issued, provided that the principal aggregate amount issued shall not exceed \$8,600,000;

(c) The date or dates, maturity date or dates and principal amount of each maturity of the Series 2012G Bonds, the Series 2012H Bonds and the Project Notes,

the amount and date of each Sinking Fund Installment, if any, and which Series 2012G Bonds and which Series 2012H Bonds are Serial Bonds or Term Bonds, if any; provided that the Series 2012G Bonds and the Series 2012H Bonds shall mature no later than December 31, 2034;

(d) The interest rate or rates of each Series of the Bonds or Project Notes, the date from which interest on each Series of the Bonds or Project Notes shall accrue and the first Interest Payment Date therefor; provided that the true interest cost (as determined by an Authority Officer, which determination shall be conclusive) on the Bonds or Project Notes shall not exceed seven percent (7.0%);

(e) The denomination or denominations of and the manner of numbering and lettering each Series of the Bonds or Project Notes;

(f) The Redemption Price or Redemption Prices, if any, and, subject to the provisions of Article VII of the General Bond Resolution, the redemption terms, if any, for the Bonds or Project Notes; provided, however, that the Redemption Price of any Bonds subject to redemption at the election of the Authority or in accordance with the General Bond Resolution shall not be greater than one hundred three percent (103%) of the principal amount of the Bonds or Project Notes or portion thereof to be redeemed, plus accrued interest thereon to the date fixed for redemption;

(g) Provisions for the sale of the Bonds or Project Notes and for the delivery thereof;

(h) The form of each Series of the Bonds or Project Notes, and the form of the Trustee's certificate of authentication thereon;

(i) Direction for the application of the proceeds of the Series 2012G Bonds, including the application and deposit to the Bond Service Fund of any accrued interest on the Series 2012G Bonds, the deposit to the Bond Reserve Fund of the amount which is equal to the Bond Reserve Requirement, if any, and the deposit to the Acquisition and Improvement Fund;

(j) Direction for the application of the proceeds of the Series 2012H Bonds, including the application and deposit to the Bond Service Fund of any accrued interest on the Series 2012H Bonds, the deposit to the Bond Reserve Fund of the amount which is equal to the Bond Reserve Requirement, if any, and the deposit to the Acquisition and Improvement Fund; and

(k) Direction for the application of the proceeds of the Project Notes, including the application and deposit to the Bond Service Fund of any accrued interest on the Project Notes, the deposit to the Bond Reserve Fund of the amount which is equal to the Bond Reserve Requirement, if any, and the deposit to the Acquisition and Improvement Fund; and

(l) Any other provisions deemed advisable by an Authority Officer, as required by and not in conflict with the provisions hereof, the General Bond Resolution or the Municipal and County Utilities Authorities Law, N.J.S.A. 40:14B-1 et seq. (the "Act").

The Chairman, the Vice Chairman or the Executive Director shall execute and deliver Series Certificate(s) evidencing determinations or other actions taken pursuant to the authority granted herein, and any such Series Certificate(s) shall be conclusive evidence of the action or determination of the Chairman, the Vice Chairman or the Executive Director taken on behalf of the Authority as to the matters stated therein with respect to the issuance of the Bonds or the Project Notes. The provisions of the Series Certificate(s) shall supplement those of this Fourth Supplemental Resolution. Prior to delivery of any of the Bonds or the Project Notes upon original issuance and notwithstanding anything to the contrary, the Chairman, the Vice Chairman or the Executive Director of the Authority may, by execution of the Series Certificate(s) evidencing same, modify or amend any of the terms or provisions of the General Bond Resolution or this Fourth Supplemental Resolution in any respect or for any purpose without any further action by the members of the Authority; provided, however, that such modifications or amendments shall be approved by the Authority's Chairman, Vice Chairman or Executive Director in consultation with Wilentz, Goldman & Spitzer, P.A., the Authority's Bond Counsel ("Bond Counsel") and Mark G. Kitrick, Esq. of King, Kitrick & Jackson, L.L.C., the Authority's General Counsel ("General Counsel").

All Series 2012G Bonds issued pursuant to this Fourth Supplemental Resolution of like maturity shall be identical in all respects, except as to denominations, maturity amounts, numbers and letters.

All Series 2012H Bonds issued pursuant to this Fourth Supplemental Resolution of like maturity shall be identical in all respects, except as to denominations, maturity amounts, numbers and letters.

All Project Notes issued pursuant to this Fourth Supplemental Resolution of like maturity shall be identical in all respects, except as to denominations, maturity amounts, numbers and letters.

### **ARTICLE III**

#### **Execution and Authentication of the Bonds or Project Notes**

Section 3.01. Execution and Authentication of Bonds or Project Notes. Pursuant to the provisions of Section 305 of the General Bond Resolution, the Chairman or Vice Chairman of the Authority is hereby authorized and directed to execute by manual or facsimile signature the Bonds or the Project Notes in the name of the Authority and the corporate seal (or a facsimile thereof) shall be thereunto affixed, imprinted, engraved or otherwise reproduced thereon. The Secretary or Assistant Secretary of the Authority is hereby authorized and directed to attest by manual or facsimile signature the execution of the Bonds or the Project Notes.

The Trustee (as hereinafter defined) is hereby authorized and directed to authenticate by manual or facsimile signature the Bonds or the Project Notes, and deliver the same to or upon the order of the Authority, in such amounts and at such times as the Trustee shall be directed in writing by an Authority Officer, upon compliance with the conditions applicable thereto contained in the General Bond Resolution.

Section 3.02. No Recourse on Bonds or the Project Notes. No recourse shall be had for the payment of the principal, Sinking Fund Installments or Redemption Price of or interest on the Bonds or the Project Notes or for any claim based thereon or on this Fourth Supplemental Resolution against any member, officer or employee of the Authority or any person executing the Bonds or the Project Notes and neither the members of the Authority nor any other person executing the Bonds or the Project Notes shall be subject to any personal liability or accountability by reason of the issuance thereof, all such liability being expressly waived and released by every Holder of the Bonds or the Project Notes by the acceptance thereof.

## **ARTICLE IV**

### **Offering of Bonds**

Section 4.01. Covenant of Authority as to Compliance with the Code. The Authority hereby reaffirms the covenants set forth in Section 616 of the General Bond Resolution and covenants that it will take all actions within its control that are required to assure that interest on the Bonds or the Project Notes is excluded from gross income for Federal income tax purposes and that it will refrain from taking any action or omitting to take any action that would adversely affect such exclusion.

Section 4.02. Amendment Prior to Delivery of Bonds or the Project Notes Upon Original Issuance. Prior to delivery of any of the Bonds or the Project Notes upon original issuance and notwithstanding anything to the contrary, an Authority Officer may, by execution of a certificate evidencing same, modify or amend any of the terms or provisions of the Bonds or the Project Notes, the General Bond Resolution or this Fourth Supplemental Resolution (excepting that any such amendment or modification must be within the parameters set forth in Section 2.03 hereof, paragraphs (a) through (l) thereof inclusive) in any respect or for any purpose without any further action by the Authority.

Section 4.03. Appointment of Trustee, Bond Registrar and Paying Agent. The Bank of New York Mellon is hereby appointed to continue as Trustee, Bond Registrar and Paying Agent (the "Trustee") for the Holders of the Bonds or the Project Notes. The Trustee shall signify its acceptance of its respective trusts and duties under the General Bond Resolution and this Fourth Supplemental Resolution by a written certificate delivered to the Authority prior to delivery of the Bonds.

Section 4.04. Award of and Approval for Payment for Professional Services.

(a) The Authority does hereby, as applicable, award, approve and authorize payment for the following to render professional services and/or provide services in connection with the Project or to the Authority in conjunction with the Project to be paid out of the proceeds of the Bonds or Project Notes issued for the Project as follows:

<u>AWARDED AND APPROVED TO:</u>	<u>DESCRIPTION OF SERVICES</u>	<u>AMOUNT NOT TO EXCEED</u>
Mark G. Kitrick, Esq. King, Kitrick & Jackson, L.L.C.	Authority General Counsel	\$5,000
Wilentz, Goldman & Spitzer, P.A.	Bond Counsel to the Authority	\$45,000 plus disbursements
To Be Determined By An Authority Officer And Approved And Ratified By The Authority	Trustee	\$5,000

(b) The Secretary is hereby authorized and directed to publish a brief notice of this award in accordance with the provisions of New Jersey law.

Section 4.05. Incidental Action. Any Authority Officer may be, and each of them hereby is, authorized and directed to execute and deliver any and all documents, certificates, agreements and instruments and to do and cause to be done any and all acts and things necessary or proper for carrying out of the Project and the transactions contemplated by the General Bond Resolution, this Fourth Supplemental Resolution, the loan agreements, and for the authorization, sale and issuance of the Bonds or the Project Notes and to effect the consummation of the transaction contemplated thereby. The execution by such officers of any such documents, certificates, agreements and instruments, with such changes, insertions or omissions as shall be approved by an Authority Officer in consultation with the Authority's Bond Counsel and General Counsel, shall be conclusive evidence of the approval of such changes, insertions or omissions and no further ratification or other action by the Authority members shall be required with respect thereto.

## ARTICLE V

### Miscellaneous

Section 5.01. Governing Law. This Fourth Supplemental Resolution and the Bonds or the Project Notes are and shall be deemed to be contracts made under the laws of the State of New Jersey (the "State") and for all purposes shall be governed by and construed in accordance with the laws of the State.

Section 5.02. Fourth Supplemental Resolution to Govern. To the extent that the provisions of this Fourth Supplemental Resolution are inconsistent with the General Bond Resolution, the provisions of this Fourth Supplemental Resolution shall control to the extent not adverse to the interests and rights of any Bondholders pursuant to the terms of the General Bond Resolution.

Section 5.03. Binding Effect. This Fourth Supplemental Resolution shall inure to the benefit of and shall be binding upon the Authority and the Trustee and their respective successors and assigns, subject to the limitations contained in this Fourth Supplemental Resolution.

Section 5.04. Filing of Fourth Supplemental Resolution and Publication of Notice of Adoption. (a) In accordance with the provisions of N.J.S.A. 40:14B-28, a copy of this Fourth Supplemental Resolution shall be duly filed in the office of the Authority and made available for public inspection, and copies of this Fourth Supplemental Resolution shall be provided to and filed with the offices of the clerks of the Boroughs of Brielle, Sea Girt, Spring Lake and Spring Lake Heights and the Township of Wall.

(b) In accordance with the provisions of N.J.S.A. 40:14B-67, a copy of this Fourth Supplemental Resolution shall be duly filed with the Director of the Division of Local Government Services, Department of Community Affairs, State of New Jersey.

(c) In accordance with the provisions of N.J.S.A. 40:14B-28, a notice of adoption of this Fourth Supplemental Resolution shall be published in an Authorized Newspaper of the Authority.

Section 5.05. Reimbursement. The Authority reasonably expects to reimburse its expenditure of Costs of the Project paid prior to the issuance of the Bonds or the Project Notes with proceeds of its Bonds or the Project Notes. This resolution is intended to be and hereby is a declaration of the Authority's official intent to reimburse the expenditure of Costs of the Project paid prior to the issuance of the Bonds or the Project Notes with the proceeds of a borrowing to be incurred by the Authority, in accordance with Treasury Regulations §150-2. The maximum principal amount of the Bonds or the Project Notes expected to be issued to finance the Project is \$8,600,000. The Costs of the Project to be reimbursed with the proceeds of the Bonds or the Project Notes will be "capital expenditures" in accordance with the meaning of Section 150 of the Code. No reimbursement allocation will employ an "abusive arbitrage device" under Treasury Regulations §1.148-10 to avoid the arbitrage restrictions or to avoid the restrictions under Sections 142 through 147, inclusive, of the Code. The proceeds of the Bonds or the Project Notes used to reimburse the Authority for Costs of the Project, or funds corresponding to such amounts, will not be used in a manner that results in the creation of "replacement proceeds", including "sinking funds", "pledged funds" or funds subject to a "negative pledge" (as such terms are defined in Treasury Regulations §1.148-1), of the Bonds or the Project Notes or another issue of debt obligations of the Authority, other than amounts deposited into a "bona fide debt service fund" (as defined in Treasury Regulations §1.148-1). All reimbursement allocations will occur not later



than 18 months after the later of (i) the date the expenditure from a source other than the Bonds or the Project Notes is paid, or (ii) the date the Project is "placed in service" (within the meaning of Treasury Regulations §1.150-2) or abandoned, but in no event more than 3 years after the expenditure is paid.

Section 5.06. Effective Date. This Fourth Supplemental Resolution shall become effective immediately upon the satisfaction of the requirements for the adoption of bond resolutions set forth in the "Local Authorities Fiscal Control Law" (N.J.S.A. 40A:5A-1 et seq.) and the Act.