

**AUTHORIZING THE COMMISSIONERS TO GO INTO CLOSED  
SESSION FOR THE PURPOSE OF DISCUSSING MATTERS  
PURSUANT TO N.J.S.A. 10:4-12(b)**

WHEREAS, in order to exclude the public from a discussion of a matter as provided in N.J.S.A. 10:4-12(b), the Commissioners must first adopt a resolution stating the general nature of the subject or subjects to be discussed and the time and circumstance when such discussion can be disclosed to the public. N.J.S.A. 10:4-13

WHEREAS, the Commissioners find it necessary to adjourn to closed session and will not return to public session for the purpose of taking action on the matters discussed in closed session, and

WHEREAS, the Commissioners will discuss litigation and personnel, and

NOW THEREFORE BE IT RESOLVED, the Commissioners have adjourned the public portion of the meeting, and are beginning the closed session meeting, and will not return to open session.

**DATE: OCTOBER 20<sup>TH</sup>, 2011**

<u>Commissioner</u>	<u>Motion</u>		<u>Recorded Vote</u>			
	<u>1st</u>	<u>2nd</u>	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
McENERY	X		X			
PERNICE			X			
ROSEN		X	X			
TOUBIN			X			

**RESOLUTION AUTHORIZING THE GENERAL MANAGER TO PREPARE  
PLANS AND SPECIFICATIONS AND ADVERTISE FOR THE RECEIPT OF  
BIDS FOR THE MILLPONDS PUMP STATION REPLACEMENT PUMP**

**WHEREAS**, the General Manager has requested that plans and specifications be prepared and advertise for the receipt of bids for the Millponds Pump Station Replacement Pump, and

**NOW, THEREFORE, BE IT RESOLVED** by the Commissioners of the Western Monmouth Utilities Authority as follows:

1. The General Manager is hereby authorized to prepare plans and specifications and advertise and receive bids for the Millponds Pump Station Replacement Pump.
2. The Secretary is authorized to forward copies of this resolution, certified to be a true copy to:
  - a) Coleen Weber, Office Manager

**DATE: OCTOBER 20<sup>th</sup>, 2011**

<u>Commissioner</u>	<u>Motion</u>		<u>Recorded Vote</u>			
	<u>1st</u>	<u>2nd</u>	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
<b>McENERY</b>	<b>X</b>		<b>X</b>			
<b>PERNICE</b>			<b>X</b>			
<b>ROSEN</b>		<b>X</b>	<b>X</b>			
<b>TOUBIN</b>			<b>X</b>			

**RESOLUTION AWARDING CONTRACT FOR MAGNESIUM HYDROXIDE TRIAL TO PREMIER  
MAGNESIA LLC**

**WHEREAS**, a notice to bidders was published in the Asbury Park Press on September 22<sup>nd</sup>, 2011; and

**WHEREAS**, on October 18<sup>th</sup>, 2011 at 10:00AM, a bid was received by the Authority for the Magnesium Hydroxide Trial, and

**WHEREAS**, the General Manager reviewed the bid set forth on the bid tally sheet of October 18<sup>th</sup>, 2011, and

**WHEREAS**, Premier Magnesia LLC, was the only bidder in the amount of \$63,600.00 for the Magnesium Hydroxide Trial, and

**WHEREAS**, the General Manager has recommended that the contract for the Magnesium Hydroxide Trial be awarded to Premier Magnesia LLC, and

**WHEREAS**, funds are or will be available for this purpose;

**NOW, THEREFORE, BE IT RESOLVED** by the Commissioners of the Western Monmouth Utilities Authority as follows:

1. The bid from Premier Magnesia LLC in the amount of \$63,600.00 for the Magnesium Hydroxide Trial Contract to expire on January 31<sup>st</sup>, 2012, be awarded and,
2. The General Manager is authorized to enter into a contract between the Western Monmouth Utilities Authority and Premier Magnesia LLC.
3. Premier Magnesia LLC is required to comply with requirements of P.L. 1975 C.127 (N.J.A.C. 17:27)
4. The Secretary is hereby authorized to forward copies of this resolution, certified to be a true copy to;
  - a) Premier Magnesia LLC
  - b) Dane Martindell, Facility Manager
  - c) Marilyn Seidenberg, Director of Finance

**DATE: OCTOBER 20<sup>TH</sup>, 2011**

<u>Commissioner</u>	<u>Motion</u>		<u>Recorded Vote</u>			
	<u>1st</u>	<u>2nd</u>	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
<b>McENERY</b>	<b>X</b>		<b>X</b>			
<b>PERNICE</b>			<b>X</b>			
<b>ROSEN</b>		<b>X</b>	<b>X</b>			
<b>TOUBIN</b>			<b>X</b>			

**RESOLUTION AUTHORIZING THE GENERAL MANAGER TO PREPARE  
PLANS AND SPECIFICATIONS AND ADVERTISE FOR THE RECEIPT OF  
BIDS FOR LISTED CONTRACTS DUE TO EXPIRE ON 01/31/2012**

**WHEREAS**, the General Manager has requested that plans and specifications be prepared, and advertise for the receipt of bids for the following:

1. Extra Ordinary Maintenance & Repair Contract
2. Electrical Maintenance & Repair Contract
3. High Calcium Quicklime Slurry Contract
4. HVAC Maintenance & Repair Contract
5. Nitrate Oxygen Contract
6. Electric Motor Repair & Replacement Contract
7. Uniform Service Contract

**NOW, THEREFORE, BE IT RESOLVED** by the Commissioners of the Western Monmouth Utilities Authority as follows:

1. The General Manager is hereby authorized to prepare plans and specifications and to advertise for the receipt of bids for the above specified contracts.
2. The Secretary is authorized to forward copies of this resolution, certified to be a true copy to:
  - a) Coleen Weber, Office Manager

**DATE: OCTOBER 20<sup>th</sup>, 2011**

<u>Commissioner</u>	<u>Motion</u>		<u>Recorded Vote</u>			
	<u>1st</u>	<u>2nd</u>	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
<b>McENERY</b>	<b>X</b>		<b>X</b>			
<b>PERNICE</b>			<b>X</b>			
<b>ROSEN</b>		<b>X</b>	<b>X</b>			
<b>TOUBIN</b>			<b>X</b>			

**RESOLUTION APPROVING MINUTES**

**BE IT RESOLVED** by the Commissioners of the Western Monmouth Utilities Authority that the minutes of the meeting of September 1<sup>st</sup>, 2011 be and the same are hereby accepted for filing by the Authority.

**DATE: OCTOBER 20<sup>TH</sup>, 2011**

<u>Commissioner</u>	<u>Motion</u>		<u>Recorded Vote</u>			
	<u>1st</u>	<u>2nd</u>	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
McENERY			X			
PERNICE		X	X			
ROSEN	X		X			
TOUBIN			X			

**BE IT RESOLVED** by the Commissioners of the Western Monmouth Utilities Authority that the minutes of the meeting of September 15<sup>th</sup>, 2011 be and the same are hereby accepted for filing by the Authority.

**DATE: OCTOBER 20<sup>TH</sup>, 2011**

<u>Commissioner</u>	<u>Motion</u>		<u>Recorded Vote</u>			
	<u>1st</u>	<u>2nd</u>	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
McENERY		X	X			
PERNICE	X		X			
ROSEN					X	
TOUBIN			X			

**AUTHORIZING THE COMMISSIONERS TO GO INTO CLOSED  
SESSION FOR THE PURPOSE OF DISCUSSING MATTERS  
PURSUANT TO N.J.S.A. 10:4-12(b)**

**WHEREAS**, in order to exclude the public from a discussion of a matter as provided in N.J.S.A. 10:4-12(b), the Commissioners must first adopt a resolution stating the general nature of the subject or subjects to be discussed and the time and circumstance when such discussion can be disclosed to the public. N.J.S.A. 10:4-13

**WHEREAS**, the Commissioners find it necessary to adjourn to closed session and will not return to public session for the purpose of taking action on the matters discussed in closed session, and

**WHEREAS**, the Commissioners will discuss litigation and personnel, and

**NOW THEREFORE BE IT RESOLVED**, the Commissioners have adjourned the public portion of the meeting, and are beginning the closed session meeting, and will not return to open session.

**DATE: OCTOBER 6<sup>TH</sup>, 2011**

<u>Commissioner</u>	<u>Motion</u>		<u>Recorded Vote</u>			
	<u>1st</u>	<u>2nd</u>	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
McENERY			X			
PERNICE	X		X			
ROSEN		X	X			
TOUBIN			X			

**AUTHORIZING THE COMMISSIONERS TO GO INTO CLOSED  
SESSION FOR THE PURPOSE OF DISCUSSING MATTERS  
PURSUANT TO N.J.S.A. 10:4-12(b)**

**WHEREAS**, in order to exclude the public from a discussion of a matter as provided in N.J.S.A. 10:4-12(b), the Commissioners must first adopt a resolution stating the general nature of the subject or subjects to be discussed and the time and circumstance when such discussion can be disclosed to the public. N.J.S.A. 10:4-13

**WHEREAS**, the Commissioners find it necessary to adjourn to closed session and will return to public session for the purpose of taking action on the matters discussed in closed session, and

**WHEREAS**, the Commissioners will discuss litigation, and

**NOW THEREFORE BE IT RESOLVED**, the Commissioners have adjourned the public portion of the meeting, and are beginning the closed session meeting, and will return to open session.

**DATE: OCTOBER 6<sup>TH</sup>, 2011**

<u>Commissioner</u>	<u>Motion</u>		<u>Recorded Vote</u>			
	<u>1st</u>	<u>2nd</u>	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
McENERY			X			
PERNICE		X	X			
ROSEN	X		X			
TOUBIN			X			

**RESOLUTION AUTHORIZING PAYMENT PLAN FOR SERVICE FEES  
FOR PATRICIA FERRARA (ACCOUNT #06702)**

**WHEREAS**, the Western Monmouth Utilities Authority ("WMUA"), from time to time, and on a case-by-case basis, reviews hardship requests for payment plans of its service fees; and

**WHEREAS**, Joseph and Patricia Ferrara are the owners of Block 8.06, Lot 21 on the tax maps of the Township of Freehold; and

**WHEREAS**, the WMUA has been advised of a hardship by the owners in paying outstanding service fees due on their property; and

**WHEREAS**, such service fees are paid for the service to the property as part of the owners' Account # 06702; and

**WHEREAS**, Patricia Ferrara has requested to pay the outstanding service fees through a payment plan with the WMUA;

**WHEREAS**, Patricia Ferrara will still be required to pay quarterly sewer service fees going forward in addition to the outstanding service fees; and

**WHEREAS**, the Commissioners of the WMUA have reviewed the request and approve of it subject to Patricia Ferrara making timely payments to the WMUA and entering into an agreement to this effect with the WMUA; and

**WHEREAS**, Patricia Ferrara is advised that in the event a monthly payment is missed or a current quarterly sewer service fee is missed, the entire unpaid balance, plus interest at one and one half percent (1½%) per month, which shall accrue as of the first (1<sup>st</sup>) of each month, will be due and payable to the Authority; and

**WHEREAS**, Patricia Ferrara is advised that in the event a monthly payment is missed or a quarterly sewer service fee is missed, the entire unpaid balance, plus interest at one and one half percent (1½%) per month, which shall accrue as of the first (1<sup>st</sup>) of each month, shall become a lien on the respective property and the WMUA may maintain a civil action to collect the entire unpaid balance, plus interest, and along with attorney's fees; and



WHEREAS, Patricia Ferrara is advised that in the event a monthly payment is missed or a quarterly sewer service fee is missed, the WMUA reserves the right to enter upon the respective property and shut off service; and

WHEREAS, Patricia Ferrara is advised that if it files for protection under the Federal Bankruptcy Act, 11 U.S.C.A. § 101 *et seq.*, the entire unpaid balance, plus interest at one and one half percent (1½%) per month, will be due and payable to the Authority; and

WHEREAS, Patricia Ferrara is advised that if it closes title and sells the Property, the entire unpaid balance, plus interest at one and one half percent (1½%) per month, will be due and payable to the Authority.

NOW THEREFORE, BE IT RESOLVED by the Commissioners of the Western Monmouth Utilities Authority as follows:

1. Patricia Ferrara of Block 8.06, Lot 21 on the tax maps of the Township of Freehold is authorized to make payments to the WMUA for the unpaid balance of sewer service fees plus all accrued interest, in monthly payments of \$100.00 commencing on November 1, 2011 in addition to regular quarterly payments of the current sewer service fees; and

2. That the Chairman and Secretary are hereby authorized to execute an Agreement between the WMUA and each respective owner in accordance with the terms set forth herein.

4. The Secretary is hereby authorized to forward copies of this resolution, certified to be a true copy to:

- a. John S. Wisniewski, Esq., Attorney
- b. Marilyn Seidenberg, Director of Finance
- c. Patricia Ferrara

DATE: OCTOBER 6<sup>th</sup>, 2011

<u>Commissioner</u>	<u>Motion</u>		<u>Recorded Vote</u>			
	<u>1st</u>	<u>2nd</u>	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
McENERY		X	X			
PERNICE			X			
ROSEN	X		X			
TOUBIN			X			

**RESOLUTION AWARDING CONTRACT FOR EMERGENCY GENERATOR MAINTENANCE AND REPAIR TO POWER EQUIPMENT COMPANY**

WHEREAS, a notice to bidders was published in the Asbury Park Press on September 19<sup>th</sup>, 2011; and

WHEREAS, on October 4<sup>th</sup>, 2011 at 10:00AM, bids were received by the Authority for the Emergency Generator Maintenance and Repair Contract, and

WHEREAS, the General Manager reviewed the bids set forth on the bid tally sheet of October 4<sup>th</sup>, 2011, and

WHEREAS, Power Equipment Company, was the lowest bidder in the amount of \$30,900.00 for the Emergency Generator Maintenance and Repair Contract, and

WHEREAS, the General Manager has recommended that the contract for Emergency Generator Maintenance and Repair be awarded to Power Equipment Company, and

WHEREAS, funds are or will be available for this purpose;

NOW, THEREFORE, BE IT RESOLVED by the Commissioners of the Western Monmouth Utilities Authority as follows:

1. The bid from Power Equipment Company in the amount of \$30,900.00 for the Emergency Generator Maintenance and Repair Contract to expire on January 31<sup>st</sup>, 2013, be awarded and,
2. The General Manager is authorized to enter into a contract between the Western Monmouth Utilities Authority and Power Equipment Company.
3. Power Equipment Company is required to comply with requirements of P.L. 1975 C.127 (N.J.A.C. 17:27)
4. The Secretary is hereby authorized to forward copies of this resolution, certified to be a true copy to;
  - a) Power Equipment Company.
  - b) George Kasternakis, Maintenance Supervisor
  - c) Marilyn Seidenberg, Director of Finance

**DATE: OCTOBER 6<sup>TH</sup>, 2011**

<u>Commissioner</u>	<u>Motion</u>		<u>Recorded Vote</u>			
	<u>1st</u>	<u>2nd</u>	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
<b>McENERY</b>		<b>X</b>	<b>X</b>			
<b>PERNICE</b>			<b>X</b>			
<b>ROSEN</b>	<b>X</b>		<b>X</b>			
<b>TOUBIN</b>			<b>X</b>			

**RESOLUTION AWARDING HAWKINS ROAD PUMP STATION UPGRADES CONTRACT TO  
DEMAIO ELECTRICAL COMPANY, INC.**

**WHEREAS**, a notice to bidders was published in the Asbury Park Press on June 20<sup>th</sup>, 2011 and the Star Ledger on June 22<sup>nd</sup>, 2011; and

**WHEREAS**, the WMUA had issued two notices to the bid documents on July 12, 2011 and July 19, 2011, respectively; and

**WHEREAS**, on July 21<sup>st</sup>, 2011 at 11:00AM, bids were received by the Authority for the Hawkins Road Pump Station Upgrades, and

**WHEREAS**, the lowest bidder, DeMaio Electrical Company, Inc. failed to acknowledge the July 19, 2011 notice; and

**WHEREAS**, as a result, the WMUA Commissioners determined that the lowest bidder, DeMaio Electrical Company, Inc. had a fatal defect pursuant to *N.J.S.A. 40A:11-23.2(e)* (failure to acknowledge receipt of a notice, revision or addenda to the bid documents) which could not be cured and all other bids exceed the engineer's cost estimate; and

**WHEREAS**, as a result, on September 15, 2011, the Commissioners adopted Resolution 11-126 rejecting all bids; and

**WHEREAS**, litigation was filed against the WMUA by DeMaio Electrical Company, Inc. in the Superior Court of New Jersey, Monmouth County, Law Division, Docket Number MON-L-4425-11 seeking a court order awarding DeMaio Electrical Company, Inc. the contract for the Hawkins Road Pump Station Upgrades; and

**WHEREAS**, on September 26, 2011, Judge Lawrence M. Lawson, A.J.S.C. ordered that the WMUA award the contract for the Hawkins Road Pump Station Upgrades to DeMaio Electrical Company, Inc.;

**NOW, THEREFORE, BE IT RESOLVED** by the Commissioners of the Western Monmouth Utilities Authority as follows:

1. Pursuant to Judge Lawson's Court Order, the contract for the Hawkins Road Pump Station Upgrades is awarded to DeMaio Electrical Company, Inc.
2. A certified copy of the Resolution shall be provided to each of the following:
  - a. Wisniewski & Associates, LLC
  - b. DeMaio Electrical Company, Inc.
  - c. CME Associates, Inc.

**DATE: OCTOBER 6<sup>th</sup>, 2011**

<b><u>Commissioner</u></b>	<b><u>Motion</u></b>		<b><u>Recorded Vote</u></b>			
	<b><u>1st</u></b>	<b><u>2nd</u></b>	<b><u>Aye</u></b>	<b><u>Nay</u></b>	<b><u>Abstain</u></b>	<b><u>Absent</u></b>
<b>McENERY</b>		<b>X</b>	<b>X</b>			
<b>PERNICE</b>			<b>X</b>			
<b>ROSEN</b>	<b>X</b>		<b>X</b>			
<b>TOUBIN</b>			<b>X</b>			

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**WISNIEWSKI  
& ASSOCIATES, LLC  
ATTORNEYS AT LAW**

**ATTORNEY-CLIENT PRIVILEGED COMMUNICATION**

September 26, 2011

**VIA E-MAIL AND FIRST-CLASS MAIL**

Steven Toubin, Chairman  
**Western Monmouth Utilities Authority**  
103 Pension Road  
Manalapan, NJ 07726

**Re: DeMaio Electrical Company, Inc. vs.  
Western Monmouth Utilities Authority  
Docket No.: MON-L-4425-11  
Our File No. 10.10018**

Dear Chairman Toubin:

On Friday, September 23, 2011, Richard H. Rybak, Esq. of this firm appeared before Judge Lawrence M. Lawson, A.J.S.C. on the return of an Order to Show Cause filed by DeMaio Electrical Company, Inc ("DeMaio") seeking to restrain the WMUA from opening up and reading out loud the Hawkins Road Pump Station Upgrade re-bids scheduled for tomorrow Tuesday, September 27, 2011. In addition, DeMaio sought an Order directing the WMUA to award to it the Hawkins Road Pump Station Upgrade Contract (the "Contract"). We just received Judge Lawson's written opinion. Judge Lawson has ordered the WMUA to cancel tomorrow's re-bid opening and ordered the WMUA to award the Contract to DeMaio.

Pursuant to N.J.S.A. 40A:11-23.2, the New Jersey Legislature has established five mandatory items, the failure to submit any one of which, shall be deemed a fatal defect that renders the bid unresponsive. One of those requirements is the bidder's written acknowledgement of receipt of any notice or revisions or addenda to the bid documents. N.J.S.A. 40A:11-23.2(e). In this case, the WMUA had issued two notices to the bid documents on July 12, 2011 and July 19, 2011, respectively. The former was acknowledged by DeMaio. The latter was not.

Judge Lawson, in giving his opinion, made a distinction between the first and second notices, essentially implying that the first could be considered a material notice by the bidder and the second could be considered nonmaterial. The second notice, like the first notice, contained a revision to the bid documents. In making this distinction, Judge Lawson has introduced subjective understanding by a bidder as an acceptable means to get around the required mandatory items of N.J.S.A. 40A:11-23.2. Judge Lawson states that "...DeMaio was at least reasonable in assessing [the second notice] as a non-mandatory document that may not have necessitated an acknowledgement."

We respectfully disagree with Judge Lawson because the Appellate Division in *P&A Construction, Inc. vs. Township of Woodbridge*, 365 N.J.Super. 165 (App. Div. 2004) held that a bidder's failure to address any of the required mandatory items of N.J.S.A. 40A:11-23.2 is a

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Steven Toubin, Chairman  
Western Monmouth Utilities Authority  
September 26, 2011  
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WISNIEWSKI  
& ASSOCIATES, LLC  
ATTORNEYS AT LAW

material defect that requires rejection of its bid. Specifically, the Appellate Division held that *N.J.S.A. 40A:11-23.2* makes nonwaivable under any circumstances the bidder's failure to acknowledge in writing the receipt of any notice or revisions or addenda. *Id.* at 176. DeMaio failed to acknowledge receipt of the second notice to the Contract while other bidders did acknowledge receipt of the second notice. Our position supported by statutory and case law is that this is a fatal defect that cannot be cured or waived. In other cases where non-mandatory items are discussed, the courts discuss the materiality of the item. However, in *P&A Construction, Inc.*, the Appellate Division held that that the New Jersey Legislature, by adopting *N.J.S.A. 40A:11-23.2*, created a legislative directive that the failure to include any of the mandatory items of *N.J.S.A. 40A:11-23.2* "forecloses [the WMUA] and a reviewing court from even considering whether the failure to submit any of those items is immaterial..." *Id.* at 176. Judge Lawson, however, went against this legislative directive and established case law and decided to consider whether the failure to acknowledge receipt of the second notice was material.

As a result of Judge Lawson's decision, the WMUA has two options: (1) comply with Judge Lawson's decision; or (2) appeal Judge Lawson's decision. Complying will require no further expenditure of legal resources and implementation of the Contract can commence. Appealing will require expenditure of legal resources and could delay the implementation of the Contract. I am aware that the Hawkins Road Pump Station is in need of improvements and the intent was to start work as soon as possible. However, you should consider the following.

Judge Lawson is the Assignment Judge of the Superior Court in Monmouth County. His opinion today constitutes the settled case law for Monmouth County. Therefore, all future bids and any issues resulting therefrom will be governed by Judge Lawson's subjective standard rule of "What did the bidder think was mandatory?" This new subjective standard rule creates a degree of uncertainty in the administration of the Local Public Contracts Law and has the potential for greater costs to the WMUA and other government entities down the road.

Our recommendation is for the WMUA to appeal Judge Lawson's decision and to preserve the existing case law as discussed in *P&A Construction, Inc.* I will be available to discuss this matter at the October 6, 2011 Workshop Meeting. In the meantime, tomorrow's re-bid opening cannot occur and any questions raised tomorrow should be directed to my office.

If you have any questions prior to the next WMUA meeting, please feel free to contact me.

Very Truly Yours,

John S. Wisniewski

JSW:rhr

CC: WMUA Commissioners (via e-mail only)  
Kathy Leatherman (via e-mail only)  
Tim Gillen, P.E. (via e-mail only)

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**RESOLUTION AUTHORIZING THE GENERAL MANAGER OR THE  
DIRECTOR OF FINANCE TO REFUND OVERPAYMENTS TO  
CUSTOMERS**

**WHEREAS**, from time to time WMUA customers make duplicate payments on their accounts, or inadvertently send a payment for another utility to the WMUA in error, and

**WHEREAS**, said customers may request for the payment to be refunded, and

**WHEREAS**, the General Manager or the Director of Finance may deem in necessary to refund the customer the duplicate payment, and

**NOW, THEREFORE BE IT RESOLVED** that the General Manager or the Director of Finance of the Western Monmouth Utilities Authority may refund the duplicate payment of a payment made in error, and

**BE IT FURTHER RESOLVED**, that this Resolution will expire on January 31<sup>st</sup>, 2012 or until such time as the annual Re-Organization Meeting is held where it shall be re-addressed.

**DATE: OCTOBER 6<sup>TH</sup>, 2011**

<u>Commissioner</u>	<u>Motion</u>		<u>Recorded Vote</u>			
	<u>1<sup>st</sup></u>	<u>2<sup>nd</sup></u>	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
McENERY		X	X			
PERNICE			X			
ROSEN	X		X			
TOUBIN			X			

**RESOLUTION AMENDING RESOLUTION # 04-134 AND APPOINTING  
ROBERT J. SMITH CUSTODIAN OF THE PETTY CASH FUND**

WHEREAS, Resolution # 04-134 established a petty cash fund pursuant to provisions of N.J.S.A. 48:5A-1 and,

WHEREAS, the Director of Finance had determined and recommended that the number of petty cash funds be reduced and that the Inside Maintenance Department petty cash fund and the Operations Department fund has become one fund in the amount of \$500.00

WHEREAS, Dane Martindell was appointed custodian of the Petty Cash fund and now wishes for Robert Smith, to be designated as the custodian of the petty cash fund, and;

**NOW THEREFORE BE IT RESOLVED**, by the Commissioners of the Western Monmouth Utilities Authority as follows:

1. The Inside Maintenance Department no longer has its' own Petty Cash fund, but instead shares a Petty Cash fund with the Operations Department in the amount of \$500.00
2. The Director of Finance is authorized to take any action necessary to effectuate the purpose intended by this Resolution.
3. Robert Smith, Plant Superintendent is hereby designated as custodian of the \$500.00 petty cash fund of the Operations Department
4. The Secretary is hereby authorized to forward copies of this Resolution, certified to be a true copy to:
  - a) Marilyn Seidenberg, Director of Finance
  - b) Gerard Stankiewicz, Samuel Klein and Company
  - c) Robert Smith, Plant Superintendent

**DATE: OCTOBER 6<sup>TH</sup>, 2011**

<u>Commissioner</u>	<u>Motion</u>		<u>Recorded Vote</u>			
	<u>1st</u>	<u>2nd</u>	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
<b>McENERY</b>		<b>X</b>	<b>X</b>			
<b>PERNICE</b>			<b>X</b>			
<b>ROSEN</b>	<b>X</b>		<b>X</b>			
<b>TOUBIN</b>			<b>X</b>			



**RESOLUTION AUTHORIZING THE RELEASE OF THE PERFORMANCE BOND  
AND CASH SURETY FOR HIDDEN POND ESTATES #407**

**WHEREAS**, the developer of Hidden Pond Estates #407 has requested a Performance Bond release inspection and Cash Surety reduction, and;

**WHEREAS**, a Performance Bond in the amount of \$66,710.52 and the Cash Surety in the amount of \$7,412.28 (plus accrued interest) be released, with \$1,000.00 being held by the WMUA to cover the cost associated with the Maintenance Bond Inspection that will take place at the end of the Maintenance period, and

**WHEREAS**, T&M Associates, the Consulting Engineer has reviewed the project and has recommended that the Performance Bond and Cash Surety be released in accordance with a letter dated September 26<sup>th</sup>, 2011, and

**NOW, THEREFORE, BE IT RESOLVED** by the Commissioners of the Western Monmouth Utilities Authority as follows:

1. The Performance Bond in the amount of \$66,710.52 and the Cash Surety in the amount of \$7,412.28 (plus accrued interest) be released, with \$1,000.00 being held by the WMUA until maintenance bond inspection has occurred.
2. The WMUA should determine if there are sufficient funds to cover all professional fees necessary for the closing of the project.
3. The applicant shall be required to complete all deficiencies before any further releases in the performance guarantees.
4. The Secretary is hereby authorized to forward copies of this resolution, certified to be a true copy to
  - a) T&M Associates
  - b) Kathy Leatherman, General Manager
  - c) Hidden Pond Associates #407

**DATE: OCTOBER 6<sup>TH</sup>, 2011**

<u>Commissioner</u>	<u>Motion</u>		<u>Recorded Vote</u>			
	<u>1st</u>	<u>2nd</u>	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
<b>McENERY</b>		<b>X</b>	<b>X</b>			
<b>PERNICE</b>			<b>X</b>			
<b>ROSEN</b>	<b>X</b>		<b>X</b>			
<b>TOUBIN</b>			<b>X</b>			

Project 407



Eleven Tindall Road, Middletown, New Jersey 07748-2792  
(732) 671-6400 \* fax (732) 671-7365 www.tandmassociates.com

WMUA-11770.A.A

September 26, 2011

Ms. Kathy Leatherman, General Manager  
Western Monmouth Utilities Authority  
103 Pension Road  
Manalapan, New Jersey 07726

Re: **Western Monmouth Utilities Authority  
Hidden Pond Estates (407) – Manalapan Township  
Performance Bond Release**

Dear Ms. Leatherman:

As requested by the developer, T&M conducted the final inspection of the above-referenced project. No deficiencies were observed, and the project was determined to be complete. The developer has since submitted an acceptable 2-year Maintenance Bond as required by the Rules and Regulations.

T&M recommends that the Performance Bond, in the amount of \$66,710.52, and the Cash Surety, in the amount of \$7,412.28 (plus accrued interest) be released, with \$1,000 being held by the WMUA to cover the cost associated with the Maintenance Bond Inspection that will take place at the end of the Maintenance period.

The WMUA should determine if there are sufficient funds to cover all professional fees necessary for the closing of the project.

We request this item to be placed on the agenda for discussion at the next WMUA meeting.

If you have any questions, please contact Jim Carr or myself at this office.

Very truly yours,

KEVIN F. TOOLAN, P.E.  
WESTERN MONMOUTH UTILITIES  
AUTHORITY ENGINEER

  
KEITH W. HENDERSON, P.E.  
SENIOR VICE PRESIDENT

KFT:KWH:JBC:WMH:scb

cc: Authority Commissioners  
John Wisniewski, Esq.  
Robert Noel, WMUA  
Arvo Prima, Jankim Properties, LLC

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Regional Offices: MANALAPAN, NEW JERSEY AND PHILADELPHIA

Reso # 11-129