

WARREN TOWNSHIP SEWERAGE AUTHORITY

RESOLUTION 12 -50

RESOLUTION AUTHORIZING THE AUTHORITY'S CHAIRMAN TO EXECUTE AN AGREEMENT AND RELEASE WITH WARREN HOV PARCEL III, LLC REGARDING A REFUND CLAIM UNDER INFLOW & INFILTRATION AGREEMENTS AND AUTHORIZING PAYMENT OF \$36,738.09

WHEREAS, Warren HOV Parcel III, LLC ("Warren HOV") became the contract purchaser of certain property within Warren Township, known as Block 198, Lot 9.09 and 9.10, the owners of such property being Pheasant Bridge Corp (Block 198, Lot 9.10 - Pheasant Bridge Property) and Mary and J.T. Quense (Block 198, Lot 9.09 - Quense Property) (collectively "Property"); and

WHEREAS, the Property participated in the Authority's 1992 Stage I/II Inflow and Infiltration Remediation Program ("I&I Program"), reserving thereunder a total of 21 equivalent dwelling units or EDUs, with agreements executed by Pheasant Bridge for 15 EDUs and by Quense for 6 EDUs. For those EDUs, Pheasant Bridge made an initial payment of \$42,000 and a supplemental payment of \$19,230.25 for a total of \$61,230.25. Quense made an initial payment of \$16,800 and a supplemental payment of \$7,692.06 for a total of \$24,492.06. Thus, the total paid for these properties was \$85,722.31; and

WHEREAS, under the I&I Program, if capacity became available through I&I remediation, each participant was required to utilize that capacity by a specified deadline, or the Authority would have the right to offer the capacity to others who had not participated in the I&I Program. Based on circumstances that developed, including the fact that the zoning of the Pheasant Bridge and Quense properties was the subject of litigation, in 1995 the Authority agreed to extend the deadline for an application to be made until March 1996. While neither Pheasant Bridge nor Quense made an application by the time of that extended deadline, based on a report in 1998 that the zoning litigation was still pending, the Authority determined to continue to treat both properties as participants in the I&I Program and not to offer the capacity to any other properties; and

WHEREAS, the zoning litigation ended with the New Jersey Supreme Court's decision in August, 2001 in Pheasant Bridge's favor, resulting in the re-zoning of both parcels; and

WHEREAS, in or about 2007, Warren HOV applied to the Authority for approval of a project on the Property what would utilize twelve (12) of the combined twenty-one (21) EDUs between the two properties, at which time Warren HOV represented that if approval were given to the project, which requires twelve (12) EDU's of capacity, Warren HOV would release any and all rights to the other 9 EDUs; and

WHEREAS, under all of those circumstances, the Authority agreed to continue to recognize that the Property was entitled to priority over properties that did not participate in the 1992 I&I Program and, accordingly, by Resolution 08-19 granted

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conditional preliminary approval for 12 EDUs, which permitted Warren HOV to proceed with an application for land use approval; and

WHEREAS, subsequent to Resolution 08-19, Warren HOV entered into a contract to sell, and did sell a substantial portion of the Property to the County of Somerset County and the Township of Warren, the closing on which occurred in or about December 2010. As a result of such sale, the County and the Township acquired 55.41 acres of the Property, Quense retained 1.72 acres, and Warren HOV retained 1.6 acres; and

WHEREAS, subsequent to the sale of the Property, Warren HOV obtained preliminary and final approval from the Authority to construct a residence and to utilize one (1) EDU of capacity on Block 198, Lot 9.13, which parcel would be created by the subdivision of the Property, such approval being set forth in Resolution 10-101; and

WHEREAS, Warren HOV requested that the Authority refund all or some portion of the amounts that had been paid under the I&I Program Agreements; and

WHEREAS, the Authority maintained that under the terms of the I&I Program Agreements the Authority was not required to refund any portion of the amounts paid, except under the express circumstances as set forth in those Agreements, which circumstances have not occurred; and

WHEREAS, the Authority has determined to resolve this matter in a manner that will result in payment in the amount of \$36,738.09 to Warren HOV and extinguish any and all remaining rights and claims under the I&I Program Agreements; and

WHEREAS, such resolution shall be conditioned upon Warren HOV submitting executed releases and assignments from Somerset County, Warren Township and the Quenses as some portion of the Property is now owned by each of these entities or individuals who are not parties to this Agreement and Release.

NOW, THEREFORE, BE IT RESOLVED by the members of the Warren Township Sewerage Authority, in the County of Somerset, New Jersey, that the Authority hereby authorizes its Chairman to execute an Agreement and Release with Warren HOV, on behalf of the Authority, in a form satisfactory to the Authority's attorneys, contingent upon Warren HOV's submission of executed releases and assignments from Somerset County, Warren Township and Mary and J.T. Quense, such releases and assignments to be in a form satisfactory to the Authority's attorney.

BE IT FURTHER RESOLVED that, upon execution of the required agreement, the Authority shall pay Warren HOV \$36,738.09 in full satisfaction of all claims.

Moved by Mrs. Garafola
Seconded by Mr. Checchio

Roll Call Vote	Yes	No
Chairman Reeder	_____	_____
Mr. Truglio	x _____	_____
Ms. Garafola	x _____	_____
Mr. Kaufman	_____	_____
Mr. Vetter	x _____	_____
Mr. Checchio (Alternate #1)	x _____	_____
Mr. Paoella (Alternate #2)	x _____	_____

CERTIFICATION

I, Deborah Catapano, Secretary of the Warren Township Sewerage Authority in the County of Somerset, New Jersey, do hereby certify that the above resolution is a true and correct copy of a resolution adopted at a meeting of the Warren Township Sewerage Authority on April 18, 2012.



Deborah L. Catapano, Authority Secretary