

RESOLUTION 2015-15

THE CARNEYS POINT TOWNSHIP SEWERAGE AUTHORITY

**FIRST SUPPLEMENTAL BOND RESOLUTION OF THE
CARNEYS POINT TOWNSHIP SEWERAGE AUTHORITY
TO A BOND RESOLUTION ADOPTED ON JANUARY 28,
2015 AMENDING, SUPPLEMENTING AND CLARIFYING
CERTAIN PROVISIONS OF SAID BOND RESOLUTION;
AND TAKING RELATED ACTIONS**

BACKGROUND

WHEREAS, The Carneys Point Township Sewerage Authority ("Authority") is a public body corporate and politic organized and existing pursuant to the Sewerage Authorities Law of New Jersey, constituting Chapter 138 of the Pamphlet Laws of 1946 of the State of New Jersey, and the acts amendatory thereof and supplemental thereto (*N.J.S.A. 40:14A-1 et seq.*) ("Act") and created by virtue of an ordinance of the governing body of the Township of Carneys Point, New Jersey ("Township") duly adopted on March 4, 1959; and

WHEREAS, the Authority is the owner and operator of sewerage facilities serving the residents of the Township ("System"); and

WHEREAS, the Authority is empowered to acquire, construct, maintain, operate and use projects related to its System and to issue bonds of the Authority to finance and refinance such projects relating to said System; and

WHEREAS, the Authority determined to undertake a capital improvement project consisting of reconstruction and repairs to the System, all as more particularly described in the information prepared in connection therewith by the Authority's Consulting Engineer, on file and available for inspection in the offices of the Authority (collectively, the "Project"); and

WHEREAS, The Salem County Pollution Control Financing Authority ("SCPCFA") is a public body corporate and politic organized and existing pursuant to the New Jersey Pollution Control Financing Law (*N.J.S.A. 40:37C-1 et seq.*); and

WHEREAS, pursuant to *N.J.S.A. 40:37C-5(p)*, the SCPCFA is empowered to extend credit or make loans to any person in order to pay or provide for the payment of any project costs of a pollution control facility; and

WHEREAS, the Authority's consulting engineer and the SCPCFA have determined that the Project constitutes a pollution control facility for purposes of *N.J.S.A. 40:37C-3*; and

WHEREAS, the SCPCFA has agreed to loan the Authority funds to complete the Project in amount not-to-exceed \$1,100,000 ("Loan"), the definitive terms of such Loan, including dates for the payment of principal thereof and interest thereon, will be as set forth in a loan agreement to be entered into by the Authority and the SCPCFA ("Loan Agreement"); and

WHEREAS, the Authority has determined to incur and to evidence the Loan by the issuance of its Revenue Bonds, Series 2015, to be issued and sold to the SCPCFA ("Bonds"), in principal amounts corresponding to the amount of the Loan; and

WHEREAS, by resolution adopted January 14, 2015, the Local Finance Board approved the issuance by the Authority of the Bonds after a public hearing thereon, and pursuant to the applicable provisions of the Fiscal Control Act made positive findings with respect thereto.

WHEREAS, the Authority has heretofore adopted a bond resolution on January 28, 2015 ("2015 Bond Resolution"), in connection with the authorization and issuance of the Bonds; and

WHEREAS, the Authority is permitted, pursuant to Section 5.03 of the 2015 Bond Resolution, to modify or amend certain provisions of the 2015 Bond Resolution by the adoption of a supplemental resolution with the written consent of SCPCFA, as purchaser of the Bonds; and

WHEREAS, to effectuate the financing plan described in 2015 Bond Resolution and above, it is necessary for the Authority to adopt this supplemental bond resolution pursuant to and in accordance with the terms of the 2015 Bond Resolution, to amend, supplement and clarify certain provisions of the 2015 Bond Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE CARNEYS POINT TOWNSHIP SEWERAGE AUTHORITY AND THE MEMBERS THEREOF, AS FOLLOWS:

Section 1. Short Title. This supplemental resolution may hereafter be cited by the Authority, and is hereafter referred to as the "First Supplemental Bond Resolution". The 2015 Bond Resolution, as supplemented by this First Supplemental Bond Resolution, are collectively referred to as the "Resolution".

Section 2. Definitions. As used, mentioned or referred to in this First Supplemental Bond Resolution, the following words, terms and phrases shall have the meanings ascribed thereto, unless the context shall clearly require otherwise.

"First Supplemental Bond Resolution" shall mean this First Supplemental Bond Resolution, as the same may from time to time be amended and supplemented.

"Loan" shall mean the loan made by the SCPCFA to the Authority in the aggregate principal amount not-to-exceed \$1,100,000 to finance the Costs of Construction of the Project under the terms and conditions set forth in the Loan Agreement.

"Loan Agreement" shall mean the Loan and Security Agreement, dated as of March 1, 2015, by and among the Authority and the SCPCFA, together with any supplements and amendments thereto, relating to the Project to be financed with the proceeds of the Bonds and specifying the terms of the repayment of the Bonds.

"Loan Payment" shall mean the sum of money representing principal and interest for the Project necessary to amortize debt service on the Bonds on each Loan Payment Date, as set forth in the Loan Agreement. The obligations of the Authority under the Bonds shall be deemed to be amounts payable under the Loan Agreement. Each Loan Payment shall be deemed to be a credit against the corresponding obligation of the Authority under the Loan Agreement and shall fulfill the Authority's obligation to pay such amount or amounts under the Loan Agreement and under the Bonds.

"Loan Payment Date" shall mean ten (10) days prior to the applicable interest payment date or principal installment due date, as set forth in the Loan Agreement.

"Resolution" shall mean the 2015 Bond Resolution as amended and supplemented by the First Supplemental Bond Resolution, as the same may from time to time be amended and supplemented.

Section 3. Other Defined Terms. Capitalized terms, not otherwise defined herein, shall have the meanings ascribed thereto in the 2015 Bond Resolution.

Section 4. Interpretations. As the context shall clearly require, words importing persons include persons, firms, associations (whether incorporated or not incorporated), corporations and other organizations of persons. Words importing the singular number include the plural number and vice versa, and words importing the masculine include the feminine.

Section 5. Amendment of 2015 Bond Resolution

(a) Section 2.05 of the 2015 Bond Resolution is hereby amended to include the following:

"5. The Bonds shall be sold to the SCPCFA at a price equal to the principal amount of the Loan and Bonds shall mature at the same time and in the same amounts with respect to both principal and interest as the Loan Payments described in the Loan Agreement."

(b) A new Section 2.11 shall be added to the 2015 Bond Resolution to read as follows:

"Section 2.11. Terms of the Bonds.

Certain matters required to be specified and determined in respect of the Bonds will be set forth in the Loan Agreement, to be entered into by the Authority and the SCPCFA and in the schedules annexed thereto.

Such matters include, *inter alia*, the following:

- (i) The aggregate principal amount of the Bonds; and
- (ii) The dates and amounts of the maturities, interest and principal payment dates of the Bonds."

(c) A new Section 2.12 shall be added to the 2015 Bond Resolution to read as follows:

"Section 2.12. Authorization of the Loan Agreement.

The Loan Agreement shall be, and the same hereby is, approved in a form to be hereafter approved by the Chairman, Vice Chairman or Business Manager, in consultation with the Authority's Bond Counsel. The Chairman, Vice-Chairman or Business Manager shall each be, and hereby are, severally authorized and directed on behalf of the Authority to execute and deliver the Loan Agreement and the Secretary or Assistant Secretary of the Authority is hereby authorized and directed to attest the validity of the signature(s) on the Loan Agreement. The execution of the Loan Agreement by either of the Chairman, Vice Chairman or Business Manager shall evidence the Authority's approval of the terms thereof and no further action therefor shall be required."

(d) Section 3.01 of the 2015 Bond Resolution is hereby amended and restated in its entirety to read as follows:

"Section 3.01 Pledge Effected by This 2015 Bond Resolution.

1. The Bonds are secured as to the payment of the principal thereof and interest thereon in accordance with their provisions and the provisions of this 2015 Bond Resolution by: (i) the proceeds from the sale of the Bonds; (ii) moneys on deposit in all Funds established by this 2015 Bond Resolution including the investments, if any, thereof; and (iii) the Revenues. The Authority's obligation to pay either the principal of, or interest on, the Bonds shall be subordinate in all respects to the Authority's obligation to make payment on its outstanding Project Notes, Series 2014, until such time as such notes are no longer outstanding. In the event that such proceeds of the sale of the Bonds, Revenues and other moneys and securities are not available or are insufficient, the Bonds are also secured as to payment of the principal thereof and interest thereon by the Annual Charges in accordance with the provisions of the Service Agreement pursuant to which the Township is required to provide the amounts necessary to pay or provide for the expenses of operation and maintenance of the System, including insurance, renewals, replacements, extensions, enlargements, alterations and betterments and the principal of and interest on any and all bonds, notes or other evidences of indebtedness issued by the Authority as the same become due. The Authority has no power to levy or collect taxes.

2. Such proceeds from the sale of the Bonds, other moneys and securities and the Revenues and the Annual Charges hereby pledged shall immediately be subject to the lien of this pledge without any physical delivery thereof or further act, and the lien of this pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof.

3. Nothing contained in this 2015 Bond Resolution shall be construed to prevent the Authority from acquiring, constructing or financing through the issuance of its bonds, notes or other evidences of indebtedness any facilities which do not constitute a part of the Project for the purposes of this 2015 Bond Resolution or from securing such bonds, notes or other evidences of indebtedness by a pledge of, or other security interest in, the revenues therefrom or any lease or other agreement with respect thereto or any revenues derived from such lease or other agreement.

4. The Authority expressly reserves the right to adopt one or more resolutions separate and apart from this 2015 Bond Resolution and reserves the right to issue bonds or other obligations of the Authority under such resolutions for any of its authorized purposes, including the financing of the cost of any project, facility or undertaking permitted by the Act.

5. The Township shall, to the extent it makes any payment(s) pursuant to the terms of the Service Agreement, which payment(s) is to be applied to the payment of principal of and/or interest on the Bonds, become subrogated to the rights of the SCPCFA.

6. The Authority hereby acknowledges and agrees that the Township is a third party beneficiary of this 2015 Bond Resolution. To the extent the Township makes any payment(s) pursuant to the terms of the Service Agreement, which payment(s) is to be applied to the payment of principal of and/or interest on the Bonds, the Township shall become entitled to and have the right to exercise the rights and privileges of the SCPCFA under this 2015 Bond Resolution."

(e) Section 3.07 of the 2015 Bond Resolution is hereby amended and restated in its entirety to read as follows:

"Section 3.07 Investment of Certain Funds.

1. Moneys held in the Debt Service Fund shall be invested and reinvested by the Trustee to the fullest extent practicable in Investment Obligations which mature no later than one (1) business day prior to such time as shall be necessary to provide moneys when needed for payments to be made from such Fund. Moneys held in the Construction Fund may be invested and reinvested in Investment Obligations which mature not later than such times as shall be necessary to provide moneys when needed for payments to be made from such Fund. The Trustee shall make all such investments of moneys held by it in accordance with written instructions received from any Authority Officer. The Trustee may conclusively rely upon the Authority's written instructions as to both the suitability and legality of the directed investments. Ratings of permitted investments shall be determined at the time of purchase of such permitted investments and without regard to ratings subcategories. The Trustee may make any and all such investments through its own investment department or that of its affiliates or subsidiaries, and may charge its ordinary and customary fees for such trades, including investment maintenance fees. In the absence of investment instructions from the Authority, the Trustee shall not be responsible or liable for keeping the moneys held by it hereunder fully invested in permitted investments. The Trustee shall not be responsible or liable for losses on investments made in compliance with the provisions of the Resolution.

Although the Authority recognizes that it may obtain a broker confirmation or written statement containing comparable information at no additional cost, the Authority hereby agrees that confirmations of permitted investments are not required to be issued by the Trustee for each month in which a monthly statement is rendered. No statement need be rendered for any fund or account if no activity occurred in such fund or account during such month."

(f) Section 5.03 of the 2015 Bond Resolution is hereby amended and restated in its entirety to read as follows:

"Section 5.03 Powers of Amendment. Subject to the provisions of Section 5.06, any modification or amendment of this 2015 Bond Resolution and of the rights and obligations of the Authority and of the SCPCFA, in any particular, may be made by a supplemental resolution with the written consent of the SCPCFA. Any amendments that adversely affect the rights, protections, privileges and immunities of the Trustee shall not be entered into without the written consent of the Trustee."

(g) Section 7.03 of the 2015 Bond Resolution is hereby amended and restated in its entirety to read as follows:

"Section 7.03 Certain Rights of the Trustee. The Trustee may execute any of the trusts or powers created hereby and perform the duties required by it, by or through agents and attorneys, and shall be entitled to rely on advice of counsel concerning its duties hereunder, and shall not be answerable for the default or misconduct of any such counsel or agent selected by it with reasonable care.

The Trustee may construe any provision of this 2015 Bond Resolution that may be ambiguous or inconsistent with any other provision hereof, and any such construction made in good faith shall be binding upon others.

Notwithstanding anything contained herein to the contrary, the Trustee agrees to perform the trusts and duties provided for hereunder only upon and subject to the following expressed terms and conditions:

- (1) The Trustee shall not be accountable for the use or application by the Authority of any of the Bonds or the proceeds thereof or for the use or application of any money paid over by the Trustee in accordance with the provisions of this 2015 Bond Resolution or for the use and application of money received by any paying agent.
- (2) The Trustee shall not be answerable for other than its negligence or willful misconduct in connection with the performance of its duties hereunder.
- (3) The Trustee shall have no responsibility with respect to any information, statement or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to the Bonds, except for any information provided by the Trustee, and shall have no responsibility for compliance with any state or federal securities laws in connection with the Bonds. Under no circumstances does the Trustee assume any responsibility or liability for the issuance of the Bonds as obligations the interest on which is excludable from gross income for purposes of Federal income taxation or for the maintenance of such tax-exempt status subsequent to the date of issuance of the Bonds.
- (4) None of the provisions of this 2015 Bond Resolution shall require the Trustee to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers if it shall have reasonable grounds for believing that repayment of such funds or indemnity satisfactory to it against such risk or liability is not assured to it.
- (5) The Trustee shall have the right to accept and act upon instructions or directions pursuant to this 2015 Bond Resolution sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provided, however, that the Authority shall provide to the Trustee an incumbency certificate listing designated persons with the authority to provide such instructions and containing specimen signatures of such designated persons, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If the Authority elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling, provided that such understanding is reasonable in light of the instructions given. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reasonable reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Authority agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties."

(h) Section 9.06(3) of the 2015 Bond Resolution is hereby amended and restated in its entirety to read as follows:

“3. As an alternative cumulative to and not excluding the provisions of subsection 2 of this Section 9.06, any Bonds or interest installments appertaining thereto, whether at or prior to the maturity of such Bonds, shall be deemed to have been paid within the meaning of this Section 9.06 if there shall have been deposited with the Trustee by or on behalf of the Authority either moneys in an amount which shall be sufficient, or Investment Obligations the principal of and the interest on which when due will provide moneys which, together with the moneys, if any, deposited with the Trustee at the same time, shall be sufficient, to pay when due the principal and interest due and to become due on said Bonds on and prior to the maturity dates thereof. Neither the Investment Obligations or any moneys so deposited with the Trustee nor any moneys received by the Trustee on account of principal of or interest on said Investment Obligations shall be withdrawn or used for any purpose other than, and all such moneys shall be held in trust for and be applied to, the payment, when due, of the principal of the Bonds for the payments of which they were deposited and the interest accrued thereon to the date of maturity. In determining the sufficiency of the moneys and/or Investment Obligations deposited pursuant to subsection (3) of this Section, the Trustee shall be entitled to receive, at the expense of the Authority, and may rely on a verification report of a firm of nationally recognized independent certified public accountants.”

(i) Exhibit “A” of the 2015 Bond Resolution is hereby amended and restated in the form attached hereto as Exhibit “A”.

Section 6. Severability. The provisions of this First Supplemental Resolution are hereby declared to be separable. If any Section, phrase or provision shall for any reason be declared to be invalid, such declarations shall not affect the validity of the remainder of the Sections, phrases or provisions.

Section 7. Prior Resolutions. All prior resolutions of the Authority or portions thereof inconsistent herewith are hereby repealed.

Section 8. Headings for Convenience Only. The descriptive headings herein are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

Section 9. Notice of Adoption of First Supplemental Resolution. A copy of this First Supplemental Resolution shall be filed for public inspection in the office of the Authority.

Section 15. Governing Law. This First Supplemental Resolution shall be governed exclusively by the provisions hereof and by the applicable laws of the State of New Jersey without reference to conflict of law provisions.

Section 16. Effective Date. This First Supplemental Resolution shall take effect upon adoption in accordance with the Act, specifically *N.J.S.A. 40:37A-50(7)(e)*; provided, however, that in no event shall this First Supplemental Resolution become effective until such date as the Local Finance Board shall render findings in connection with the matters set forth herein, in

satisfaction of the provisions of *N.J.S.A. 40A:5A-7* and upon the filing with the Trustee of a copy of this First Supplemental Resolution certified by an Authorized Authority Representative pursuant to Section 1101(4) of the Bond Resolution.

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Recorded Vote

<u>Name</u>	<u>AYE</u>	<u>NO</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
Anthony Rullo, Chairman	✓			
Dr. Albert Graham, Jr., Vice-Chairman	✓			
Dr. Joseph F. Racite, Secretary			✓	
Charles Newton, Treasurer	✓			
Richard Gatanis, Asst. Secretary/ Asst. Treasurer	✓			

The foregoing is a true copy of a resolution adopted by the Authority on March 17, 2015.

Richard Gatanis

RICHARD GATANIS, Assistant Secretary

EXHIBIT "A"

Bond R-1

\$ _____

UNITED STATES OF AMERICA
STATE OF NEW JERSEY
COUNTY OF SALEM

THE CARNEYS POINT TOWNSHIP SEWERAGE AUTHORITY
REVENUE BOND, SERIES 2015

Dated Date

Interest Rate

Maturity Date

THE CARNEYS POINT TOWNSHIP SEWERAGE AUTHORITY (hereinafter called the "Authority"), a public body and corporate organized and existing under and by virtue of the laws of the State of New Jersey, acknowledges itself indebted and for the value received hereby promises to pay to The Salem County Pollution Control Financing Authority, as the holder of the Revenue Bond the principal sum of _____ (\$ _____), together with interest thereon from the date hereof at the rate of _____ and _____ hundredths per centum (_____%) per annum semi- annually on February 1 and August 1, commencing August 1, in each year until maturity. This Bond, as to principal and interest when due, will be payable at the principal corporate office of The Bank of New York Mellon, Woodland Park, New Jersey ("Trustee") in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

This Bond is one of a duly authorized issue of Bonds, designated as the "Carneys Point Township Sewerage Authority, Revenue Bonds, Series 2015" ("Bonds") of the Authority and authorized and issued under and pursuant to the Sewerage Authorities Law of New Jersey, constituting Chapter 138 of the Pamphlet Laws of 1946 of the State of New Jersey, and the acts amendatory thereof and supplemental thereto (N.J.S.A. 40:14A-1 et seq.) ("Act"), and under and in accordance with a 2015 Bond Resolution of the Authority adopted January __, 2015 ("Resolution"). Copies of the Resolution are on the file in the office of the Authority and at the principal corporate trust office of the Trustee.

This Bond is a special, limited obligation of the Authority and is one of the Bonds which are all of like tenor except as to denominations and numbers. This Bond is payable solely from the moneys pledged under the Resolution. This Bond shall be subordinate in all respects as to payment by the Authority to the Authority's Project Notes, Series 2014 as long as such notes shall remain outstanding.

Reference to the Resolution and any and all resolutions supplemental thereto and modifications and amendments thereof and to the Act is made for a description of the nature and extent of the security for the Bonds, the funds and moneys pledged, the rights and remedies of the holders of the Bonds with respect thereto, the terms and conditions upon which the Bonds are

issued and may be issued thereunder, and a statement of the rights, duties, immunities and obligations of the Authority and of the Trustee. The Bonds are entitled to the benefits of the Act.

To the extent and in the manner permitted by the Resolution, the provisions of the Resolution or any resolution amendatory thereof or supplemental thereto may be modified or amended by action on behalf of the Authority taken in the manner and subject to the conditions and exceptions prescribed in the Resolution.

This Bond is transferable by delivery. The Authority and the Trustee may treat and consider the bearer of this Bond as the holder and absolute owner thereof for the purpose of receiving payment of, or on account of, the principal hereof and interest hereon, and for all other purposes whatsoever. The Bonds may be issued in bearer form in the denomination of \$100,000 or any integral multiple thereof in excess of \$100,000.

The Act provides that neither the members of the Authority nor any person executing obligations of the Authority shall be liable personally on said obligations by reason of the issuance thereof.

The Bonds are not and shall not be in any way a debt or liability of the State of New Jersey, the County of Salem, the Township (except to the extent of the Township Service Agreement), or of any other county, municipality or political subdivision of said State except the Authority, and do not and shall not create or constitute any indebtedness, liability or obligation of said State, County of Salem, Township (except to the extent of the Township Service Agreement), or of any other county, municipality, or political subdivision of said State either legal, moral or otherwise.

It is hereby certified and recited that all conditions, acts and things required by the Constitution or statutes of the State of New Jersey or the Resolution to exist, to have happened or to have been performed precedent to or in the issuance of this Bond exist, have happened and have been performed and that the Bonds, together with all other indebtedness of the Authority, are within every debt and other limit prescribed by said Constitution or statutes.

This Bond shall not be entitled to any security or benefit under the Resolution or be valid or obligatory for any purpose unless the certificate of authentication hereon has been duly executed by the Trustee.

IN WITNESS WHEREOF, THE CARNEYS POINT TOWNSHIP SEWERAGE AUTHORITY has caused this Bond to be signed in its name and on its behalf by the manual or facsimile signature of its Vice Chairman and its corporate seal to be affixed, imprinted or reproduced hereon and attested by the manual or facsimile signature of its Secretary, all as of the 18th day of March, 2015.

THE CARNEYS POINT TOWNSHIP SEWERAGE AUTHORITY

[SEAL]

ATTEST:

By: _____
Vice Chairman

Secretary

CERTIFICATE OF AUTHENTICATION

This Bond is one of the issue of Bonds described in the within-mentioned Resolution, such Bond being designated as "The Carneys Point Township Sewerage Authority, Revenue Bond, Series 2015". Accompanying this Bond is the complete text of the opinion of Parker McCay P.A., Mount Laurel, New Jersey, Bond Counsel, a signed original of which is on file with the undersigned and delivered and dated the date of original delivery of and payment for this Bond.

**THE BANK OF NEW YORK MELLON,
as Trustee**

By: _____
Authorized Officer

Date of Authentication: _____, 2015