

RESOLUTION TO AUTHORIZE THE DEFENSE AND INDEMNIFICATION OF THE MEMBERS AND EMPLOYEES OF THE PEQUANNOCK RIVER BASIN REGIONAL SEWERAGE AUTHORITY

WHEREAS, there exists a need to protect the past and present members and employees of the Pequannock River Basin Regional Sewerage Authority ("PRBRSA") from the monetary costs of fines, penalties, damages, settlements, costs and legal fees associated with the defense of any civil or criminal actions which may be brought from this day forward against the PRBRSA, or any such members or employees, as the result of any action(s) or omission(s) relating to the duties of such member or employee to the PRBRSA; and

WHEREAS, the PRBRSA desires to provide such protection for its past and present members and employees from the financial consequences of any such civil or criminal action to the extent permitted by law and, therefore, provided that such alleged action or omission does not constitute actual fraud, actual malice, willful misconduct or an intentional wrong in the judgment of the PRBRSA;

NOW, THEREFORE, BE IT RESOLVED by the Pequannock River Basin Regional Sewerage Authority in the Counties of Morris and Passaic in the State of New Jersey on this 21st day of February, 2024 as follows:

1. The PRBRSA shall, to the extent permitted by law, provide a defense and indemnification to the past and present members and employees of the PRBRSA and, therefore, shall pay or otherwise reimburse the past and present members and employees of the PRBRSA for all fines, penalties, damages, costs and legal fees associated with any civil or criminal action which may be brought after the adoption of this Resolution against such members or employee based upon an act or omission of that member or employee arising out of and directly relating to the lawful exercise of his or her official duties or under color of his or her authority.

2. In any case where the PRBRSA provides a defense to a member or employee, it is authorized and directed to make direct payments to counsel or reimburse the member or employee for the costs associated with his or her defense upon the approval by the PRBRSA of proper vouchers submitted therefore, but in no case shall the PRBRSA be authorized to pay or reimburse for legal fees and expenses exceeding those customarily charged for legal services in the defense of such actions.

3. For the purposes of this Resolution, the term "member" shall include any and all persons appointed by the governing bodies of the constituent municipalities pursuant to N.J.S.A. 40:14A-4.

4. Any person seeking the provision of a defense and indemnification under the policy enunciated in this Resolution shall give prompt notice to the PRBRSA of the pendency of any such civil or criminal action for which payment or reimbursement is sought, at which time the PRBRSA shall by Resolution implement the provisions set forth herein.

5. It is within the sole discretion of the PRBRSA, in any action where the provision of such a defense and indemnification is sought by a member or employee, to:

- a. Provide a defense by an attorney chosen by the PRBRSA;
- b. Provide a defense by an attorney of the member or employee's choosing; or
- c. Assert the PRBRSA's right under any appropriate insurance policy which requires the insurer to defend and indemnify.

6. Notwithstanding the foregoing, the PRBRSA may refuse to provide for the defense or to indemnify any past or present member or employee of the PRBRSA in any action referred to above or recover any amounts paid on behalf of such member or employee for such defense if in its sole discretion it has reason to conclude that the act or omission was:

- a. Not within the scope of such member or employee duties or was carried out in an individual capacity;
- b. The subject matter of any action brought by the PRBRSA against the member or employee;
- c. A violation of the Local Government Ethics Law (P. L. 1991, c. 29); or
- d. Due to actual fraud, actual malice, willful misconduct or an intentional wrong.

7. Nothing in this Resolution shall require the PRBRSA to pay for punitive or exemplary damages resulting from the commission of a crime, actual fraud, actual malice, willful misconduct or an intentional wrong. However, the PRBRSA may indemnify an official or employee for punitive or exemplary damages provided the Board determines the acts complained of did not constitute a crime, actual fraud, actual malice, willful misconduct or an intentional wrong. Such a determination shall be made by Resolution of the Board.

8. In the event a contested matter, to which this Resolution is applicable, is resolved by way of settlement, the PRBRSA may take into account the facts, circumstances, and allegations which led to the settlement in its determination of whether it may, subject only to the provisions of paragraph 6, indemnify such past and/or present member(s) and/or employee(s) against whom such settled claims had been made.

9. It is the intention of this Resolution to set forth the policy of the PRBRSA with respect to the defense and indemnification of persons associated with the PRBRSA in the management of its affairs and business to the maximum extent permitted by law, and if any provision hereof or the application hereof to any person or circumstance is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions of this Resolution and to this end the provisions hereof are declared to be severable.

10. The policy set forth in this Resolution is prospective and shall take effect immediately, but shall automatically expire unless re-authorized at each annual reorganization meeting of the Authority.

11. This Resolution shall take effect as provided by law.

CERTIFICATION

Certified to be a true copy of a Resolution adopted by the Pequannock River Basin Regional Sewerage Authority at a duly convened meeting of the Board held on February 21, 2024.



DAVE DESAI

Secretary