Meeting of January 16, 2014
Maintenance

A meeting of the Joint Meeting was held on the above date at the Maplewood Municipal Building at 4:10 p.m. Chairperson Rice in the Chair.

The Executive Director read the following statement:

Pursuant to Section #5, Chapter 231, P.L. 1975, notice of this meeting has been provided to the public by posting the notice of the meeting of the Joint Meeting on the bulletin board of the Maplewood Municipal Building; by mailing the notice of the meeting to the Star Ledger, The Home News Tribune and to the offices of the Municipal Clerks of the 11 member municipalities of the Joint Meeting and to the City Clerk of the City of Elizabeth and to the County Clerks' Offices of Essex and Union, all on December 30, 2013.

On roll call the following members were present: Messrs. Hughes, Rice, Kelly, Levison, McTernan, Florio, Ms. Saxton, Jones, Leventhal, Haimoff and Spango. Also in attendance was Mr. Donald DeAugustine, alternate for Hillside and Mayor Accardi, alternate for Roselle Park.

Also in attendance were Messrs. McGhee, Dowhan, Terrezza, Sforza, Phillips, Barry and Berkeley, Esq. of Joint Meeting; E. Webster and J. Nobel Esq. of Genova, Burns, Giantomasi and Webster et al., Joint Meeting's Consultants CME Associates (CME), AVA Consulting LLC (AVA), Global Logistics Group (GLG).

The Chairperson led the pledge of allegiance.

Since this is the reorganization meeting, the Chairperson stated that nominations for the offices of Chairperson, Vice-Chairperson/Secretary and Treasurer would be in order.

Mr. Levison nominated Mr. Florio for the office of Chairperson which nomination was seconded by Ms. Leventhal.

The Chairperson asked if there were any further nominations. There being none, on motion by Mr. Levison, seconded by Ms. Leventhal, the nominations for Chairperson was closed. On roll call; ayes, Messrs. Hughes, Rice, Kelly, Levison, McTernan, Florio, Ms. Saxton, Jones, Leventhal, Haimoff and Spango; nays, none.

There being only one (1) nominee, on roll call; ayes, Messrs. Hughes, Rice, Kelly, Levison, McTernan, Florio, Ms. Saxton, Jones, Leventhal, Haimoff and Spango; nays, none; Mr. Florio was elected Chairperson. (R-001).

The Chairperson stated that nominations were now in order for the office of Vice-Chairperson/Secretary

Ms. Leventhal nominated Mr. Levison for the office of Vice-Chairperson/Secretary which nomination was seconded by Mr. Rice.

The Chairperson asked if there were any further nominations. There being none, on motion by Ms. Leventhal, seconded by Mr. Rice, the nominations for Vice-Chairperson/Secretary was closed. On roll call; ayes, Messrs. Hughes, Rice, Kelly, Levison, McTernan, Florio, Ms. Saxton, Jones, Leventhal, Haimoff and Spango; nays, none.

There being only one (1) nominee, on roll call; ayes, Messrs. Hughes, Rice, Kelly, Levison, McTernan, Florio, Ms. Saxton, Jones, Leventhal, Haimoff and Spango; nays, none; Mr. Levison was elected Vice-Chairperson/Secretary. (R-002)

The Chairperson stated that nominations were now in order for the office of Treasurer.

Ms. Leventhal nominated Ms. Spango for the office of Treasurer which nomination was seconded by Mr. Levison.

The Chairperson asked if there were any further nominations. There being none, on motion by Mr. Levison, seconded by Mr. Hughes, the nomination for Treasurer was closed. On roll call; ayes, Messrs. Hughes, Rice, Kelly, Levison, McTernan, Florio, Ms. Saxton, Jones, Leventhal, Haimoff and Spango; nays, none.

There being only one (1) nominee, on roll call; ayes, Messrs. Hughes, Rice, Kelly, Levison, McTernan, Florio, Ms. Saxton, Jones, Leventhal, Haimoff and Spango; nays, none: Ms. Spango was elected Treasurer. (R-003).

The Board congratulated Messrs. Florio, Levison and Ms. Spango on their election as officers of the Joint Meeting.

Messrs. Florio and Levison and Ms. Spango thanked the Board for there support.

On motion by Mr. Rice, seconded by Mr. Levison, Resolution 004, designating publications as The Star Ledger, Home News Tribune, El Nuevo Coqui, and City News Publications; Resolution 005, designating Official Financial Institutions and Resolution 006, designating Bank Signatories were adopted. On roll call; ayes, Messrs. Hughes, Rice, Kelly, Levison, McTernan, Florio, Ms. Saxton, Jones, Leventhal, Haimoff and Spango; nays, none.

On motion by Mr. Rice, seconded by Ms. Spango, the minutes of the last meeting were approved as printed. On roll call; ayes, Messrs. Rice, Levison, Florio, Ms. Jones, Leventhal and Spango; nays, none; abstaining, Messrs. Hughes, Kelly, McTernan, Ms. Saxton and Haimoff.

On motion by Mr. Levison, seconded by Ms. Leventhal, the **Treasurer's Reports** having been mailed to the Board members was received and ordered printed. On roll call; ayes, Messrs. Rice, Levison, Florio, Ms. Jones, Leventhal and Spango; nays, none; abstaining, Messrs. Hughes, Kelly, McTernan, Ms. Saxton and Haimoff.

The following verbal report was given:

Personnel & Procurement Committee: Ms. Leventhal, Chairperson of the Committee, stated that the Committee had met, discussed and recommends authorization of the following: Labor & Employment Counsel/Special Counsel for Pretreatment (R-008); Auditing Services for 2014 (R-009); Public Relations Services (R-010); Change Order #1 to Montana Construction's contract for Modifications to the Millburn Crossing on the Rahway River East Branch (R-017) and receipt of bids for Various Services, Equipment and Materials (R-018).

With regard to Resolution 007, appointing of a Law Firm as General Counsel, and the letter received from Weiner-Lesniak challenging the Board's unanimous vote disqualifying them with regard to the RFQ's for Legal Services, Resolution 110/13 at the December 19, 2013 meeting, Ms. Leventhal explained that the Board voted to amend Resolution 110/13 deleting the firm of Weiner Lesniak from the list based on criteria #4 of the factors which says, "any other factors if demonstrated to be in the best interest of the Joint Meeting and its member municipalities" and passed amended Resolution 110/13. This action was taken because they felt that a Senator as Joint Meeting's counsel could be perceived as either beneficial for Joint Meeting or detract from Joint Meeting's operations which they felt could be perceived as a conflict of interest. The action taken by the Board is reflected in the December minutes.

In the letter Mr. Weiner states that the action taken in disqualifying their firm was improper and without legal basis. Statutes were quoted and examples given of sitting Legislators, either the Assembly or Senate, who are employed as attorneys in towns within their district. He requested that this issue be addressed again at today's meeting and appropriate action be taken to rescind the

resolution disqualifying his law firm from consideration. Following a thorough discussion it was the consensus of the Committee that their recommendation and the action taken by the Board at the December 19th meeting should stand.

The Executive Director stated that based on the qualifications presented by Weiner Lesniak they are a qualified firm and should not have been disqualified. The resolution should have come before the full Board for a vote qualifying both law firms and then the Board could have voted on which firm they wanted. At the Committee meeting he explained to the member that at the time our current General Counsel was appointed, the Mayor of Newark was a member of the law firm. In order to offset any thoughts or ideas of impropriety, he sent a letter to the firm saying that even though they had been approved by the Board, the Mayor of Newark would have to withdraw from the firm and his name would have to be removed from the firm's letterhead.

Ms. Leventhal stated that this was discussed again today by the Committee as to the appearance. The Committee's concern was that if the Board were to withdraw amended resolution 110/13, which would resolve what the letter addresses, could there still be concern on the law firm's part that if the vote did not turn out for them, that our actions last month influenced the vote this month. Without legal opinion the Committee felt that was a possibility.

In answer to Ms. Leventhal's request to address the relationship with the State being different then a municipality in its municipal attorney being a Senator, Mr. Rice stated that there are a couple of things that the Board needs to discuss. The State issue has to be addressed as he believes there is a difference between Joint Meeting as an authority vis-à-vis other townships and municipalities that are represented. Joint Meeting does get requests, permits, certifications and approvals and we have oversight by a State Agency, DEP. A number of individual towns have home rule and what they say is sacrosanct, essentially, because they are all the individual member municipalities and do their own permit process. They approve their own permits, etc. based on their own regulations, their own rules, ordinances and resolutions. Joint Meeting is different since on some occasions they answer to a State Agency. In his opinion there could potentially be a problem with a State Senator as general counsel having to deal with DEP. As previously stated it could either be beneficial to Joint Meeting or be harmful to Joint Meeting depending on the nature of the situation that comes before DEP and comes before the Senate. He is not casting aspersions on Weiner Lesniak, who he thinks is above board as a firm. However, he is worried about the perception of Joint Meeting. Also he believes a precedent was established with the action taken when Joint Meeting requested that Mayor Booker be removed or at least have his name off of the firm's letterhead and not be a formal partner in that firm. When we look at criteria #4 in terms of the qualification requirements, he believes it puts the fact that Joint Meeting wants to avoid the potential appearance, not actual, but the appearance of a conflict. This is his opinion and what he feels. He believes that the Board was and is within their right to have taken the action they did at the December meeting.

Ms. Leventhal explained that although there may be questions the Committee's recommendation is to stay with amended Resolution 110/13.

Ms. Saxton asked if Weiner Lesniak had ever served as General Counsel for Joint Meeting. Also, since Resolution 110/13 was not included in her packet she did not have the opportunity to review it. However, she did have the opportunity to review the letter from Weiner Lesniak and at this time she has concerns voting on this.

Ms. Haimoff stated that she had spoken to her predecessor on this issue and what occurred at the December meeting. At this point she feels that she understands what took place and puts her confidence in the members that sat here, studied this in depth and came up with the conclusion that

they did. Based on that she would be able to concur with the Committee's recommendation and the Board's action.

Mr. McTernan stated that his predecessor had also briefed him on the actions taken by the Board at the December meeting and he feels that he can vote on this.

Mr. Hughes stated that since he also had not received anything in his packet on Resolution 110/13 and only had the opportunity to review Weiner Lesniaks letter he is not in a position to vote on this.

Mr. Kelly stated that he would have to abstain. He was briefed slightly of the Board's action at the December meeting and he did review the letter but as far as the examples are concerned that would be something he would have to be more familiar with. However, his concern is that if the Board did forego anything that happened at the December meeting and Weiner Lesniak was not chosen would Joint Meeting still be susceptible to the same situation such as a law suit.

The Chairperson stated that although he did vote for it at the December meeting, he was very hesitant and was the only one that asked some questions. He was not sure whether elected Representatives could represent towns, communities or authorities or not. Based on the other three factors, he was hoping that the Committee would feel both firms are qualified and reconsider the action taken at the December meeting. The Board has expressed some concerns which he does not 100% share, however, he wonders if with the potential of a law suit, the selection of a law firm be without that stipulation included2. In other words, the resolution voted on at the December meeting would stay the same and show two qualified law firms. However, now the question raised is that if the Board votes to rescind the action taken at the December meeting, then, theoretically we have to revote because the recommendation came out based on disqualifying Weiner Lesniak firm and they would now, theoretically, be a qualified firm. If the action taken at the December meeting was rescinded, the Board would have to vote on the original Resolution 110/13 which would say that everyone is qualified. If the Board says that there's not a conflict of interest, that it's a non-issue and that paragraph should be taken out, then we've requalified Weiner Lesniak along with our current law firm and we vote tonight on Resolution 007/14 and choose one of the two firms.

Mr. Rice stated that is a question the Board should address. However, we could 1) stay with the action taken at the December meeting, or 2) rescind the action taken, have both firms be qualified and take a vote tonight. However, as previously discussed, if we go with #2, are we opening ourselves to another potential law suit because we rescinded the action taken at the December meeting.

The Executive Director stated that he does not see that happening.

Ms. Jones stated that we want to do what's right as opposed to second guessing.

Ms. Leventhal stated that she would like to refer to counsel but if anyone wants to speak on this she is agreeable. However, she wants to know their name, affiliation and job title.

Leonard Berkeley, Esq. stated that he is a partner at Weiner Lesniak and has served as Special Counsel for the Board for approximately 10 years. He understands the members concerns and believes he may have a solution. There are many examples of attorneys representing sewerage authorities who are also legislators. For instance Assemblyman Wisneiwski lives in Sayreville and was the attorney for a number of years for the Sayreville Sewerage Authority and no one has raised a conflict of interest.

Mr. Levison stated that does not mean it is right or appropriate.

Leonard Berkeley, Esq. stated that it is not illegal and is appropriate. He does not want to debate this but Assemblyman Wisneiwski was there at least 10 years. Many of the other legislators represent Boards, Agencies and Towns within their legislative district. No different than Freeholders that are attorneys who are also legislators that represent Boards, Agencies, Authorities within their

Counties. Perhaps the Board should ask the current counsel for a written opinion as to whether or not it is a conflict.

Counsel Webster stated that he would not give an opinion on that as he believes it would be inappropriate. He also believes Mr. Berkeley's opinion is inappropriate.

Ms. Leventhal stated that during the Committee meeting both firms members were asked to leave.

Mr. Rice stated that perhaps we should just have a vote. He believes that he and the other members of the Board will vote their conscience and vote based on what is best for Joint Meeting rather then tussle over qualifications. Criteria #4 allows us to do what was done at the December meeting. However, in the interest of keeping the peace the Board can rescind the action taken and put both up for a vote.

In answer to a question for his advice to the Board on this issue, the Executive Director stated that he would recommend that the Board accept both firms as qualified.

For clarification purposes, Ms. Spango asked if the Executive Director is saying that the Board should rescind #4 and take another vote tonight.

Ms. Leventhal stated that the Board would then have to amend, amended Resolution 010/13 and go with the original Resolution 010/13. Basically, the Board would be amending the amendment because the amendment is Resolution 010/13. If the Board did that, we would amend Resolution 010/13 as it was passed at the December meeting and would reinsert Weiner Lisniak as a qualified legal general counsel. Then we would vote in one of the two qualified general counsels which would be Resolution 007/14.

In answer to the question as to whether there is a recommendation from the Committee as to which counsel they would recommend Ms. Leventhal stated that they did not get that far.

Counsel Webster stated that it is a very difficult situation for him to give advice on and would prefer not to.

Ms. Spango asked if it was felt that would open us up to another law suit. As stated previously, if we rescind it would that be admitting that we were wrong.

Mr. Rice stated that he believes it does. There is no easy way here.

The Executive Director stated that to rescind the amended Resolution does not admit that the Board was wrong. What it does is show that the Board has reconsidered the decision they made at the December meeting and after further discussion feels that the firm shouldn't have been disqualified. They are a qualified firm.

The Chairperson stated that both attorneys present can't give the Board a legal opinion.

Ms. Jones stated that officially the Board can't take the Executive Directors opinion as a valid, legal opinion as to what is right or what is wrong. The Board has to do what is best for Joint Meeting.

Ms. Leventhal stated that as Chairperson of the Committee she wanted to open it up to anyone who wants to speak.

The Director of Administration and Finance stated that the Board is going to vote on Resolution 008, Labor & Employment Counsel/Special Counsel for Pretreatment Violations and suggests that be voted on and Resolution 007 be tabled and present it to Labor Counsel for his written opinion advising the Board.

Mayor Accardi stated that 1) in this Country anyone can sue anybody for anything at any time, and 2) what we have here are two very good firms, nobody will ever question that either one of these firms are competent and able to do the job. The reason this became an issue is because of the perception and not because of reality. The letter received from Weiner Lisniak list some very specific

examples and if you look at all of the examples given it is Legislatures that are advocating on behalf of somebody that they represent. The problem that perceptibly could happen here is that the advocate for Joint Meeting could be in an adversarial position with a member that is part of a legislative district of a member of the firm. As he sees it, that is the crux of what potentially could be a problem. You have an adversarial relationship potentially that could cause a problem. Now, we do have other counsels that we can go to if there is that kind of conflict. However, in the interest of moving this off the table one of two things should happen, 1) table it until all the members have a chance to review it, or 2) rescind the action taken at the December meeting and vote tonight.

The Chairperson stated that a few opinions have been given tonight as to what action should be taken, 1) the action taken at the December meeting should not be rescinded or 2) the resolution should be rescinded and then have a vote tonight.

Mr. McTernan stated that it could be done in two steps; 1) vote on whether or not to rescind it if there was a motion to do that, or 2) possibly have a motion to table and postpone a vote on Resolution 007/14.

The Chairperson stated that if the motion to rescind fails then we would vote Resolution 007/14.

The motion made by Ms. Saxton and seconded by Mr. Florio to rescind Resolution 010/13 and amend it with the exception of the disqualification was not carried. On roll call; ayes, Ms. Saxton, Mr. Florio; nays, Messrs. Levison, McTernan, Rice, Ms. Jones, Leventhal, Heimoff and Spango; abstaining, Messrs. Hughes and Kelly.

On motion by Ms. Leventhal, seconded by Mr. Levison, Resolution 007, reappointing the Law Firm of Genova, Burns, Giantomasi and Webster et al as General Counsel was adopted. On roll call; ayes, Messrs. Kelly, Levison, McTernan, Rice, Florio, Ms. Saxton, Jones, Leventhal, Haimoff and Spango; nays, none, abstaining, Mr. Hughes.

On motion by Ms. Leventhal, seconded by Ms. Jones, Resolution 008, appointing the Law Firm of Hunt, Hamlin & Ridley to serve as Labor & Employment Counsel/Special Counsel for Pretreatment was adopted. On roll call; ayes, Messrs. Hughes, Kelly, Levison, McTernan, Rice, Florio, Ms. Saxton, Jones, Leventhal, Haimoff and Spango; nays, none.

On motion by Ms. Leventhal, seconded by Mr. Levison, Resolution 009, reappointing the firm of Suplee Clooney & Company for Auditing Services to Perform the 2014 Audit was adopted. On roll call; ayes, Messrs. Hughes, Kelly, Levison, McTernan, Rice, Florio, Ms. Saxton, Jones, Leventhal, Haimoff and Spango; nays, none.

With regard to Resolution 010, renewal of Zinn Graves Field contract, Ms. Leventhal explained that the Committee felt further clarification was needed on subcontractors and discussed before the full Board.

Counsel Webster stated that the concern was in regard to Zinn Graves Field role in the Occidental litigation. He explained that both the Litigation Subcommittee and Board felt that since an initial phase of the settlement is proceeding and since there probably will be no action for the next few years, a Public Relation or lobbyist firm would not be needed. If in the future such firms are needed then Joint Meeting would procure a firm at that time. In addition, Impact New Jersey's (lobbyist firm used) agreed to a reduction of their bill and a check has been sent to them.

On motion by Ms. Leventhal, seconded by Ms. Spango, Resolution 010 Renewal of a Contract with Zinn Graves & Field Inc. for Public Relations Services was adopted. On roll call; ayes, Messrs. Hughes, Kelly, Levison, McTernan, Rice, Florio, Ms. Saxton, Jones, Leventhal, Haimoff and Spango; nays, none.

Following a discussion on Resolution 018, Procurement by Public Bidding of Various Services, Equipment and Materials, on motion by Ms. Leventhal, seconded by Mr. Rice, Resolution 018 Procurement by Public Bidding of Various Services, Equipment and Materials was adopted. On roll call; ayes, Messrs. Hughes, Kelly, Levison, McTernan, Rice, Florio, Ms. Saxton, Jones, Leventhal, Haimoff and Spango; nays, none.

For clarification purposes with regard to Resolution 010, for a Change Order to Montana Construction's contract for the Millburn Crossing project, the Superintendent explained that there are 3 sewer lines crossing the Rahway River and the bottom of the support piers are eroding, which presents a potential hazard of the lines sagging and failing and could possibly cause a sewage spill. Our Consultant, CDM Smith and staff felt that armor mats should be added to control the erosion. In addition, some sediment had to be removed and tested due to New Jersey's Regulations. The test results showed some minor soil contamination. Additional testing was done and a disposal facility that would accept the soil had to be found which necessitated the Change Order.

In answer to question about future flooding and the cost, CME Associates explained that removing the sediment will allow the River to run its normal course and have a beneficial effect on the overall flow. Upon completion of the project, certain municipalities will pay a percentage of the costs.

On motion by Ms. Leventhal, seconded by Ms. Haimoff, Resolution 017, authorizing Change Order #1 to contract with Montana Construction Corp., Inc. for Modifications to the Millburn Crossing on the Rahway River East Branch was adopted. On roll call; ayes, Messrs. Hughes, Kelly, Levison, McTernan, Rice, Florio, Ms. Saxton, Jones, Leventhal, Haimoff and Spango; nays, none.

On motion by Ms. Jones, seconded by Ms. Spango, the **Treatment Plant Report and Industrial Pretreatment Report** having been mailed to the Board members were received and ordered printed. On roll call; ayes, Messrs. Hughes, Rice, Kelly, Levison, McTernan, Florio, Ms. Saxton, Jones, Leventhal, Haimoff and Spango; nays, none.

On motion by Mr. Levison, seconded by Ms. Jones, **Counsel, Conflict Counsel** and the **Engineer's Reports** having been mailed to the Board members were received and ordered printed. On roll call; ayes, Messrs. Hughes, Rice, Kelly, Levison, McTernan, Florio, Ms. Saxton, Jones, Leventhal, Haimoff and Spango; nays, none.

The correspondence will be printed in the minutes.

For clarification purposes, AVA Consultants explained that Elizabeth is a customer by contract to Joint Meeting. In 1930 Joint Meeting entered into a contract agreement with Elizabeth which was modified in 1981 and calls for an adjustment bill on a quarterly basis throughout the year. Following an analysis on existing data an adjustment bill is prepared and sent to Elizabeth.

The Chairperson asked if there was anyone wishing to address the Board on any Joint Meeting matter with a five-minute limit. Hearing no one the Public Session was declared closed.

On motion by Ms. Spango, seconded by Ms. Jones, Resolution 011, approving payment of bills was adopted. On roll call; ayes, Messrs. Hughes, Rice, Kelly, Levison, McTernan, Florio, Ms. Saxton, Jones, Leventhal, Haimoff and Spango; nays, none.

On motion by Ms. Jones, seconded by Mr. Hughes, Resolution 012, appreciation to Theodore R. Green; Resolution 013, appreciation to Angela R. Garretson; Resolution 014, appreciation to Thomas McDermott; Resolution 015, appreciation to Andrew Casais and Resolution 016, appreciation to David A. Bomgaars were received and ordered printed. On roll call; ayes, Messrs. Hughes, Rice, Kelly, Levison, McTernan, Florio, Ms. Saxton, Jones, Leventhal, Haimoff and Spango; nays, none.

Unfinished business – the Director of Administration and Finance distributed letters on Joint Meeting's share of the settlement agreement with regards to the Occidental litigation showing the respective municipalities their share.

There being no further business on motion by Ms. Jones, seconded by Mr. Rice, the meeting then adjourned to meet again on Thursday, February 20, 2014, at the Maplewood Municipal Building at 4:00 p.m. unless called earlier by the Chair. On roll call; ayes, Messrs. Hughes, Rice, Kelly, Levison, McTernan, Florio, Ms. Saxton, Jones, Leventhal, Haimoff and Spango; nays, none.

Respectfully submitted,

Howard Levison
Secretary