

SAMPLE RESOLUTION

NOTE: This sample resolution is intended solely to provide a guideline for institutions to utilize in drafting a resolution or resolutions to authorize Applications for one or more of the five New Jersey higher education capital funding programs. It is not intended to replace the institution's determination of what resolutions must be adopted by its board in order to authorize the submission of an Application(s). Institutions should consult with their own legal advisors in preparing the resolution(s).

RESOLUTION APPROVING AND AUTHORIZING THE UNDERTAKING AND IMPLEMENTATION OF A PROJECT¹ CONSISTING OF [_____] AND AUTHORIZING THE FINANCING OF ALL OR A PORTION OF THE PROJECT THROUGH PROGRAM(S)² MADE AVAILABLE BY THE STATE OF NEW JERSEY FOR NEW JERSEY INSTITUTIONS OF HIGHER EDUCATION AND OTHER AVAILABLE FUNDING SOURCES; APPROVING AND AUTHORIZING THE FORM OF THE APPLICATION³ TO THE SECRETARY OF HIGHER EDUCATION FOR PARTICIPATION IN SUCH PROGRAM[(S)] AS ARE APPLICABLE TO THE PROJECTS WITH SUCH CHANGES AS ARE APPROVED BY THE OFFICERS OF THE INSTITUTION DESIGNATED HEREIN AND THE SUBMISSION OF THE APPLICATION TO THE SECRETARY OF HIGHER EDUCATION; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF ANY AND ALL AGREEMENTS IN CONNECTION WITH UNDERTAKING, IMPLEMENTING AND FINANCING THE PROJECTS IN THE FORM(S) APPROVED BY THE OFFICERS OF THE INSTITUTION EXECUTING SUCH AGREEMENT(S); AND DESIGNATING AND AUTHORIZING THE OFFICERS OF THE INSTITUTION TO TAKE THE AFOREMENTIONED ACTIONS AND TO TAKE ANY AND ALL SUCH OTHER ACTIONS DEEMED NECESSARY OR DESIRABLE TO UNDERTAKE, IMPLEMENT AND FINANCE THE PROJECT(S)

WHEREAS: The Board of Trustees (the "Board") of [name of the Institution] (the "Institution") desires to approve the undertaking, implementation and financing of a project (the "Project") consisting of [insert description of project]; and

WHEREAS: The Board desires to approve the aggregate costs of the Project paid and or financed through all sources in an amount not to exceed \$_____; and

WHEREAS: The Board desires to finance all or a portion of the Project through one or more of the hereinafter defined Programs made available by the State of New Jersey (the "State") for certain projects of New Jersey institutions of higher education (the "Programs"); and

WHEREAS: The Programs are the Building Our Future Bond Act, (P.L. 2012, c.41 (the "GO Bond Act"); the Higher Education Fund Capital Improvement Fund Act, N.J.S.A. 18A:72A-72 et seq. ("CIF"); the Higher Education

Equipment Leasing Fund Act, N.J.S.A.18A: 72A-40 *et seq.* ("ELF"); the Higher Education Technology Infrastructure Fund Act, N.J.S.A.18A:72A-59 *et seq.* ("HETI"); and the Higher Education Facilities Trust Fund Act, N.J.S.A. 18A: 72A- 49 *et seq.* ("HEFT"); and

WHEREAS: The Board has determined that the Project will assist in serving the needs of its students and providing a benefit to the Institution; and

WHEREAS: The Board desires to approve financing of all or portions of the Project through [the GO Bond Act, CIF, ELF, HETI, and/or HEFT]⁴; and

WHEREAS: Portion(s) of the Project may also be financed by bonds issued by the New Jersey Educational Facilities Authority which bear tax-exempt interest for federal income tax purposes ("Tax-Exempt Bonds"), commercial loans or funds otherwise available to the Institution; and

WHEREAS: In order to provide maximum flexibility and most efficient borrowing costs, the Board wishes to authorize financing the Project through [insert Programs for which applying] (the "Proposed Programs"), issuance of Tax-Exempt Bonds, commercial loans and funds otherwise available to the Institution or any combination thereof (the "Financing Structure"); and⁵

WHEREAS: The Board wishes to approve the form of the Application to be submitted to the Secretary of Higher Education (the "Secretary") for the Proposed Programs for the Project, and to designate and authorize officers of the Institution to take necessary and desirable actions to undertake, implement and submit to the Secretary the Application for the Project;⁶ and

[**WHEREAS:** The Board hereby approves the Long Range Capital Plan of the Institution in the form attached hereto as Exhibit A and authorizes and directs the officers designated in this resolution to include the Long Range Capital Plan in the Application(s) approved herein; ⁷] and

WHEREAS: The Board desires to authorize certain officers of the Institution to determine the Financing Structure which is most economically advantageous to the Institution provided the Financing Structure includes utilization of the Proposed Programs, and take all action necessary or beneficial to accomplish the financing of the Project including the financing of capitalized interest, if any, and other costs of issuing any debt including, Tax-Exempt Bonds or other financings ("Financing Costs"); and

WHEREAS: The Board reasonably expects to reimburse expenditures for costs of the Project paid prior to issuance of Tax-Exempt Bonds or any debt bearing

interest which is exempt from gross income for federal income tax purposes which will fund an applicable Project and/or Program;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF [_____] AS FOLLOWS:

SECTION 1. The Board approves the Project and authorizes the undertaking, implementation and financing of the Project in a maximum aggregate amount not to exceed \$ _____ (including Financing Costs). [The Board approves the Long Range Capital Plan of the Institution in the form attached hereto as Exhibit A].⁸

SECTION 2. The Board approves the financing of all or any portion of the Project through the [identify Program[s] for which funding will be requested]. The Board approves the Application for funding of the Project through such Program[s] in the form submitted to the Board and authorizes and directs the herein defined Designated Officers to submit such Application to the Secretary with such changes, modifications and additions as are approved by the Designated Officers and such changes, modifications and additions shall be conclusively evidenced by the submission of the Application to the Secretary. [The Board expressly directs and authorizes the Designated Officers to submit the Long Range Capital Plan in the Application for any Program for which it is required.] The Board acknowledges and agrees that approval of the Application and receipt of funds pursuant to the Program(s) will obligate the Institution to: (a) provide funds for the operation and maintenance of the Project, (b) contribute to the cost of the Project; (c) pay all or a portion of debt service on Tax-Exempt Bonds issued to fund the Proposed Program(s) as applicable; and (d) fulfill other conditions imposed under the Program(s) and hereby directs and authorizes the Designated Officers to certify such acknowledgement and agreement as part of the submitted Application. The Designated Officers are hereby authorized and directed to fulfill all conditions of the Proposed Program(s) including without limitation providing for the operation and maintenance of the Project and using available funds of the Institution to pay for such operation and maintenance and to satisfy conditions of the Proposed Program(s) to contribute to the cost of Projects and/or debt service on Tax-Exempt Bonds issued to fund the Proposed Program(s) from available funds of the Institution.⁹

SECTION 3. The Board further approves the financing of all or any portion of the Project with Tax-Exempt Bonds, commercial loans and other funds available to the Institution and through the Financing Structure determined to be most economically advantageous to the Institution by _____ and _____ (the "Designated Officers"). The Designated Officers are expressly authorized and directed to determine such Financing Structure provided that the Financing Structure includes utilization of Programs which are approved by the Secretary for financing the Project.

SECTION 4. [The Board Chairperson, the Board Secretary, the Executive Assistant to the Board, the President and Vice President of Administration and Finance (each an "Authorized Officer")] are each hereby authorized and directed to approve, execute and deliver any and all agreements necessary to undertake, implement and finance the Project and any and all other

financing documents and instruments in the form approved by the Authorized Officers executing the same in the name of and on behalf of the [Board/Institution], in as many counterparts as may be necessary, and to affix or impress the official seal of the Institution thereon and to attest the same and such execution and attestation will be conclusive evidence of the approval of the form and content of such agreements and other documents and instruments necessary to undertake, implement and finance the Project and to pay Financing Costs including through the financing thereof. The Authorized Officers are further authorized and directed to do and perform such other acts and to take such other actions as may be necessary or required, or which may be deemed to be appropriate to implement the purposes of this resolution to undertake, implement and finance the Project and Financing Costs and the payment and/or repayment thereof.

SECTION 5. This Resolution is a declaration of the official intent of the Institution that the Institution reasonably expects and intends to reimburse expenditures for costs of the Project[s] paid prior to issuance Tax-Exempt Bonds or other tax-exempt debt issued to fund the Projects/Programs [“Applicable Tax-Exempt Debt”] in accordance with Treasury Regulation Section 1.150-2 and that the maximum principal amount of the Tax-Exempt Debt expected to be issued to finance costs of the Project [s] including amounts to be used to reimburse expenditures for such costs paid prior to the issuance of the such Tax-Exempt Debt is \$ _____ (including Financing Costs).

SECTION 6. All resolutions, orders and other actions of the Board of the Institution in conflict with the provisions of this resolution to the extent of such conflict are hereby superseded, repealed or revoked.

SECTION 7. This Resolution shall take effect immediately; and be it further

RESOLVED: That no further approvals by the Board are necessary to implement this Resolution.

**RESOLUTION
ADOPTED:**

**DULY
CERTIFIED:**

¹ The sample resolution assumes that the institution will be authorizing one project which will be described fully in the resolution describing various aspects of the project. If the institution has more than one project, the institution may either make appropriate changes to reflect that or utilize a separate resolution.

² Different components of a Project may be eligible for funding under more than one Program.

³ If an institution has more than one project, a separate application must be submitted for each project even if the institution intends to request funding from more than one Program for a specific project.

⁴ The specific Program(s) for which application is being authorized should be identified.

⁵ The sample resolution includes references and authorizes utilization of sources of funding other than the Programs. If an institution intends to use one or more of these other sources for matching funds or otherwise, the institution may wish to include authorization for these other funding sources in this resolution. Please note however, that the institution's matching funds for the GO Bond Act may not include any funds the institution receives under the CIF, HEFT, HETI or ELF Programs.

⁶ A separate Application must be submitted for each Project although an institution may apply for funding for different components of that Project through more than one Program. For example, if the institution intends to apply for funding under the GO Bond Act for one component of the Project and other components of the Project are eligible for funding under CIF and HEFT, the institution must submit one application but may request funding under the GO Bond Act, CIF and HEFT for the eligible components of that Project.

⁷ In order to be eligible for certain Programs, the institution must submit a long range capital plan approved by the institution's governing body as part of the Application for that Program. If the institution does not already have such a plan or has a plan that has not been approved by the governing body, the institution may wish to approve the plan in the resolution authorizing the applications.

⁸ See footnote 7.

⁹ The Applications requires commitment of the institution to fulfill the actions described in the last two sentences of Section 2.