

# SAIL Memorandum of Agreement (MOA)

## Summary of Documents:

- A 7 page MOA (“Agreement”) as well as Exhibits A through D.
- Exhibit A is the Statewide Assistance Infrastructure Loan Program (SAIL) Form of Note.
- Exhibit B is a copy of a Memorandum of Understanding (“MOU”) between Subgrantee and the New Jersey Office of Emergency Management dated July 2, 2013 inclusive of the following attachments: Designation of an Applicant’s Agent, State of New Jersey W-9 / Questionnaire, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions.
- Exhibit C is a Form New Jersey State Policy Recovery Bureau Request for Reimbursement for Public Funds (“RFR”) to be submitted to the NJEIT as a condition precedent to the disbursement of SAIL Loan proceeds.
- Exhibit D is a Form Statewide Assistance Infrastructure Loan Program Outlay Report and Requisition Form (“SAIL Requisition Form”) to be submitted to the NJEIT as a condition precedent to the disbursement of SAIL Loan proceeds.

## Instructions:

1. The Agreement must be properly authorized, executed and submitted to the New Jersey Environmental Infrastructure Trust (“NJEIT”) as discussed below.
2. The last page of the Agreement requires the signature of the Chief Elected/ Appointed Official or the Chief Executive Officer, title, telephone and date of signature. The Agreement also requires the signature of a witness.
3. Upload the properly executed Agreement to the Subgrantee’s secure website address for the project at [www.h2LOans.com](http://www.h2LOans.com). Upload of the Agreement is a condition precedent to the review of Subgrantee’s SAIL Loan application.

Please contact the NJEIT at 609-219-8600 regarding questions arising with regard to the Agreement or the Exhibits.

# SAIL Memorandum of Agreement

## MEMORANDUM OF AGREEMENT BY and BETWEEN THE NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST AND THE [PROJECT SPONSOR]

This Memorandum of Agreement (“Agreement”), made and entered into between the New Jersey Environmental Infrastructure Trust, hereinafter referred to as the (“NJEIT”), and [PROJECT SPONSOR], hereinafter referred to as the (“Subgrantee”), relating to application for financing through the Statewide Assistance Infrastructure Loan Program (“SAIL” or “SAIL Program”) of the NJEIT.

WHEREAS, the Trust was established pursuant to N.J.S.A. 58:11B-1 et seq. ("Trust Act") as an independent authority, in but not of the Department of Environmental Protection (the "DEP"), authorized to provide essential governmental services for the purpose of making loans to both publicly and privately owned community and nonprofit, non-community water systems ("Project Sponsors"); and

WHEREAS, the New Jersey Environmental Infrastructure Financing Program ("NJEIFP") and SAIL were established pursuant to N.J.S.A. 58:11B-1 et seq.; and

WHEREAS, the NJEIT desires to issue one or more loans to the Subgrantee for the purpose of financing the allowable costs of one or more eligible environmental infrastructure projects; and

WHEREAS, the Subgrantee desires to secure SAIL financing for approximately ten percent (10%) of the total project cost (hereafter “Local Share”) and any additional non-FEMA (hereinafter defined) eligible costs which may be allowable under the SAIL Program; for various environmental infrastructure projects to repair damage incurred during Superstorm Sandy and/or improve resiliency in future natural disasters; and

WHEREAS, this Agreement relates to project worksheet (“PW”) proposals submitted to the Federal Emergency Management Agency (“FEMA”), all or a portion of each of which include costs funded through the SAIL Program; and

WHEREAS, the New Jersey Office of Emergency Management (“NJOEM”), on behalf of the State of New Jersey, is the Grantee receiving funding under the FEMA Public Assistance Program (the "Public Assistance Program") as authorized under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288, as amended) (the "Stafford Act") and has the fiduciary responsibility to ensure those funds are spent on eligible Subgrantee facilities and activities, and are properly disbursed to the Subgrantee; and

WHEREAS, under current information provided, FEMA has determined that the Subgrantee is eligible to apply for and/or receive FEMA funding under the Public Assistance Program, subject to approval of a PW for public assistance; and

WHEREAS, the Subgrantee has executed a Memorandum of Understanding with NJOEM dated July 2, 2013 (“NJOEM MOU”), inclusive of the following attachments: Designation of an Applicant’s Agent, State of New Jersey W-9 / Questionnaire, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions, which NJOEM MOU is attached hereto as Exhibit B, which is incorporated herein and made a part hereof. In the event of any conflict between the terms of this Agreement and the NJOEM MOU, the terms of the NJOEM MOU shall govern; and

WHEREAS, this Agreement is part of the application for SAIL financing, and will become effective and binding upon approval of a PW and signature on behalf of the Subgrantee and NJEIT.

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NOW, THEREFORE, in consideration thereof, the parties hereby agree as follows:

## **Responsibilities of the Subgrantee**

The Subgrantee is responsible for compliance with and agrees to obtain a working knowledge of the Stafford Act and all applicable FEMA regulations as provided in 44 CFR and FEMA policies that govern the Public Assistance Program and shall adhere to the application of the Stafford Act and those applicable regulations and policies and OMB Circulars A-87, A-102, A-110 and A-133 as a condition for the acceptance of and expenditure of said FEMA funding.

Subgrantee agrees to work cooperatively with the NJEIT in identifying PWs (a) to be financed wholly through SAIL; and (b) which may be partially financed through SAIL. For all PWs either wholly or partially financed through SAIL, Subgrantee agrees to follow all NJOEM and NJEIFP guidelines, regulations and directives, which actions shall include but not be limited to the following: <sup>1</sup>

- Subgrantee agrees to submit RFRs (Exhibit C) and supporting documentation for PWs to the NJOEM.
- Subgrantee agrees to submit a SAIL Requisition Form (Exhibit D) and a copy of all supporting documentation to the NJEIT for all amounts relating to the above referenced RFR no later than any submission of an RFR to NJOEM related to a SAIL financed project.
- Subgrantee agrees to promptly notify NJEIT, NJOEM and FEMA of any project that involves the following:
  - Work taking place in floodplains or wetlands
  - Improved projects that increase the size or footprint of a facility (PA Program)
  - Alternate projects (PA Program)
  - Relocated projects
  - Hazard mitigation projects affecting floodplains or wetlands, such as culvert enlargements
  - Any project that changes the function of a facility
  - Work affecting facilities with historic significance

Such projects have the potential to be subject to additional FEMA review as they may trigger additional federal compliance requirements in accordance with the National Historic Preservation Act (NHPA), the National Environmental Policy Act (NEPA), Executive Order 11988 (Floodplain Management), Endangered Species Act (ESA) and other applicable federal laws.

- The Subgrantee shall assure that all project documents are made available to NJEIT, NJOEM, FEMA, Department of Homeland Security, Office of Inspector General (OIG) or to any other State or federal agency as determined by NJOEM as set forth below. Such documentation shall include but not be limited to: insurance policies, documentation relating to insurance proceeds received as a result of the disaster, and all other documentation substantiating eligible costs for the term of this Agreement as set forth below.
- Subgrantee agrees that all records, reports, documents and other material delivered or transmitted to NJEIT by the Subgrantee shall become the property of the NJEIT for use in the NJEIT's determination of the NJEIT's funding of the Local Share or any additional project cost.
- The Subgrantee shall obtain and maintain such types and extent of insurance as are reasonably available, adequate, and necessary to protect against future loss from similar hazards to the extent required under

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<sup>1</sup> Subgrantee will submit PWs for which no SAIL funding has or will be sought directly to NJOEM.

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44 CFR 206.250-206.253. This insurance must, at a minimum, be in the amount of the federal grant award plus any non-federal share.

- The Subgrantee is responsible for compliance with all applicable federal and State laws, regulations and policies including but not limited to federal Clean Water Act, State Revolving Fund (SRF) Capitalization Grant (33 U.S.C. Section 1381, et seq.), and Safe Drinking Water Act Capitalization Grants (42 U.S.C. 300j-12, Section 1452 and 65 FR 48299, Section 35.3500), NJEIFP and SAIL requirements. The Subgrantee should pay particular attention to those regulations and policies whose non-compliance may subject Subgrantee to corrective action by the NJOEM. Those policies are listed in the NJOEM MOU, attached hereto as Exhibit B, and incorporated by reference herein.
- The Subgrantee is responsible for compliance with SAIL and NJEIFP requirements, including but not limited to the terms and provisions of the SAIL Note (Exhibit A) and the timely, accurate and complete submission of all requisitions and associated forms.
- The Subgrantee is responsible for the timely and accurate submission of the SAIL loan application documentation (available at [www.H2LOans.com](http://www.H2LOans.com)), including but not limited to, (i) the Letter of Intent, (ii) application, (iii) Financial Addendum Form, (iv) environmental planning documentation, (v) engineering design, and (vi) contract specifications with the understanding that the Subgrantee shall remain responsible for all submissions of documentation to NJOEM;
- The Subgrantee is responsible for submission of all PWs, Requests for Reimbursements (“RFRs”), supporting invoices, contract change orders, proof of payment to the NJOEM (hereafter “NJOEM Submissions”);
- For activities for which SAIL funding is sought, the Subgrantee is also responsible for submission of all SAIL Requisition Forms, supporting invoices, contract change orders, proof of payment, to the NJEIT (hereafter “SAIL Submissions”);
- The Subgrantee shall certify as to the accuracy of NJOEM Submissions and agrees, to the extent permitted by applicable law, to hold the NJEIT harmless for any misrepresentations set forth therein;
- The Subgrantee is responsible to submit quarterly reports online through the New Jersey Emergency Management Grants website ([www.NJEMGrants.org](http://www.NJEMGrants.org)) to NJOEM;
- The Subgrantee is responsible to submit project time extension requests, PW version requests, and scope change requests to NJOEM as well as the NJEIT;
- The Subgrantee is responsible for timely addressing any deficiencies identified by the NJEIT or NJOEM in all Submissions and upon resolution of the deficiency, provide immediate notification to the NJEIT;
- The Subgrantee agrees to include the NJEIT in all communications with FEMA and NJOEM;
- Subgrantee agrees to pay to NJEIT, on behalf of the DEP, a Loan Origination fee equal to 2.0% of the sum of (i) the total NJEIFP principal loan amount for financing the Local Share and (ii) any additional non-FEMA eligible costs allowable and financed under the SAIL Program. One-half of the DEP’s Loan Origination Fee equal to 1% of the NJEIFP principal amount, will be incurred at the time of SAIL loan closing. The NJEIT will fund this amount to the Subgrantee as a component of the SAIL loan and such cost will be refinanced as a component of the long-term loan. Alternatively, the NJEIT Loan for the 1% DEP Loan Origination fee may be repaid directly by the Subgrantee. The remaining balance of the DEP Loan Origination Fee will be incurred and paid as specified in the schedule provided at NJEIT bond closing;

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- Subgrantee also agrees to pay all costs incurred by the NJEIT for the services of the NJEIFP's consulting engineer, currently Grant Thornton LLP and its subcontractors and assignees (including, without limitation, Tetra Tech) for engineering consulting services to the NJEIT for project applications reviewed thereby;
- Subgrantee agrees to apply for SAIL financing only with respect to PWs for which FEMA has obligated funds and non-FEMA eligible costs allowable under the SAIL Program;
- Subgrantee will complete the SAIL requisitions and associated documentation to identify each disbursement of funds to each contractor for which SAIL funds were disbursed as follows: the name of the contractor, the contractor invoice number, a brief description of the contractor activities for which payment was made, the corresponding check number issued by Subgrantee to pay each contractor, and the amount of each check or similar proof of payment for electronic transfers;
- In the event NJOEM finds NJOEM Submissions to be deficient, the Subgrantee shall correct such deficiencies and resubmit to NJOEM for reconsideration in a timely fashion, and provide NJEIT copies of the same;
- Subgrantee agrees to electronically provide to the NJEIT at or before the time of RFR submission, in such format as may be prescribed by the NJEIT, copies of checks or evidence of wire transfers to any recipients paid or to be paid with proceeds of a SAIL loan, which checks or evidence of wire transfers will reference the requisition number, contractor and associated requisition costs paid with such check or wire transfer;
- The Subgrantee agrees to monitor NJEMGrants.org for any changes in law, regulations, policy or procedure which affect the Subgrantee's grant requirements;
- The undersigned, Chief Elected or Appointed Official of the Subgrantee, is the appointed agent of the Subgrantee, and hereby declares that he/she is (1) authorized to execute and file an application for SAIL financing and this Agreement on behalf of the Subgrantee, (2) authorized to represent and act on behalf of the Subgrantee in all dealings with the NJEIT and DEP on all matters pertaining to the SAIL Program as required by this Agreement, and (3) aware of and understands the obligations of the Subgrantee set forth herein;
- To the fullest extent permitted by law, the Subgrantee shall indemnify and hold NJEIT harmless against, and the Subgrantee shall pay any and all liability, loss, cost, damage, claim, judgment or expense of any and all kinds or nature and however arising and imposed by law, which NJEIT may sustain, be subject to or be caused to incur by reason of any claim, suit or action based upon personal injury, death or damage to property, whether real, personal or mixed, or upon or arising out of this Agreement, the Subgrantee's application, any contracts entered into by the Subgrantee, the Subgrantee's ownership of its environmental infrastructure system or any project financed through SAIL or other funding described in this Agreement, or the acquisition, construction or installation of any such project; and
- The Subgrantee hereby acknowledges that failure to adhere to all applicable State and federal law, regulations, policies and directives may result in suspension and/or termination of funding/reimbursements and/or all or part of the de-obligation of previously received funding.

### **Responsibilities of the NJEIT**

- NJEIT, with assistance from DEP, shall conduct timely reviews of Subgrantee's SAIL loan application documentation, including but not limited to the Letter of Intent, application, financial addendum form, environmental planning documentation, engineering design, and contract specifications;
- NJEIT agrees to work cooperatively with the Subgrantee in identifying PWs to be financed wholly or partially through SAIL;

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- NJEIT is responsible for the review and approval of SAIL Submissions, contract change orders, project time extensions, and scope changes for the limited purpose of compliance with SAIL program requirements, exclusive of any FEMA requirements for the disbursement of only the 10% Local Share and any additional non-FEMA eligible costs which may be allowable under the SAIL Program;
- NJEIT shall furnish Subgrantee with an accounting of the activities, time and cost of resources expended by Grant Thornton / Tetra Tech in performing any activities for which costs are incurred;

### **Term of Agreement**

This Agreement shall remain in full force and effect until the earlier of (i) the date on which all loans from the NJEIT, including without limitation the Local Share, which have financed or refinanced any portion of any costs identified on a PW have been repaid in full, or (ii) the date on which all PWs of the Subgrantee relating in whole or in part to SAIL funded activities have been closed out by FEMA and the record retention period for said PWs has expired. Any changes in regulations, policies or procedures applicable to disaster funding shall constitute an amendment to this Agreement.

### **Results of De-Obligation**

The Subgrantee acknowledges that all final actions by FEMA to de-obligate funding are the financial responsibility of the Subgrantee and said amounts de-obligated, if previously paid to the Subgrantee, shall be remitted to NJOEM by the Subgrantee immediately upon demand or in accordance with NJOEM policy.

The NJEIT makes no representations, warranties, acknowledgements or agreements as to the Subgrantee's right to reimbursements from FEMA or eligibility of costs arising in any way from any activities of the NJEIT or its contractors, including but not limited to, the approval of project design, disbursement requests or delay associated therewith.

### **Limitation of Liability**

The Subgrantee acknowledges that this Agreement is intended for the benefit of the NJEIT and the Subgrantee and does not confer any rights upon any third parties. Furthermore, the Subgrantee hereby agrees, to the extent permitted by applicable law, to hold harmless and indemnify the NJEIT from any actions or claims brought on behalf of any third parties to whom services or materials are provided or who provides services or materials under any project funded by the Public Assistance Program and/or Hazard Mitigation program.

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## **Disclaimer**

In its capacity as lender and administrator of the SAIL Program, the NJEIT provides technical assistance and education outreach programs to current and potential subgrantees of the FEMA Public Assistance and/or Hazard Mitigation programs and applicants for SAIL financing.

Technical assistance includes the application of specific knowledge to a specific situation in order to address a specific need and as such is not a legal opinion or an endorsement of the Subgrantee's grants management practice. Education outreach programs include general programmatic grants management guidance for a Subgrantee to use in administering its own grants management program. The NJEIT does not render legal opinions to subgrantees, but rather provides information intended to assist a Subgrantee to prudently manage its own grants management program by employing effective methods and sound practices to manage FEMA grants and/or SAIL Loans.

Technical assistance and other information provided by NJEIT and adopted by the Subgrantee does not serve as NJEIT endorsement of the Subgrantee's grants management practice and does not relieve the Subgrantee of the responsibility of assuring that its grants management practice is in compliance with applicable laws, regulations and policies as required by SAIL, the Public Assistance Program and/or Hazard Mitigation program.

The Subgrantee, by its decision to participate in SAIL and the Public Assistance Program, bears the ultimate responsibility for ensuring compliance with all applicable State and federal laws, regulations and policies, and bears the ultimate consequences of any adverse decisions rendered by NJEIT, NJOEM, FEMA, or any other State and federal agencies with audit, regulatory, or enforcement authority. Throughout the grants management process, NJEIT, as the lender and administrator of the SAIL Program, reserves the right to demand that the Subgrantee comply with all applicable State and federal laws, regulations and policies, terminate reimbursements and take any and all other actions it deems appropriate to protect those funds for which it is responsible.

## **Discrimination Clause**

The Subgrantee agrees to abide by the requirements of the following as applicable: Title VI and VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, Federal Executive Order 11246, the Federal Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Act of 1975, and the Americans with Disabilities Act of 1990.

The Subgrantee agrees not to discriminate in its employment practices, and will render services under this Agreement without regard to race, color, religion, sex, national origin, veteran status, political affiliation, or disabilities.

Any act of discrimination committed by the Subgrantee or failure to comply with these statutory obligations when applicable shall be grounds for termination of this Agreement.

## **Notices**

All notices and other communications pertaining to this Agreement shall be in electronic format and/or writing and shall be transmitted either by e-mail, personal hand-delivery (and receipted for) or deposited in the United States Mail, as certified mail, return receipt requested and postage prepaid, to the other party, addressed as follows:

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New Jersey Environmental Infrastructure  
Trust Executive Director  
3131 Princeton Pike  
Building 4, Suite 216  
Lawrenceville, NJ 08648

ATTN: dzimmer@njeit.org

[PROJECT SPONSOR]

ATTN: \_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed this Agreement on the day, month and year first written above.

## WITNESSES:

\_\_\_\_\_  
NJEIT  
Witness  
Name:

\_\_\_\_\_  
NJEIT Official  
Name: Robert Briant, Jr.  
Title: Vice-Chairman

\_\_\_\_\_  
Date

\_\_\_\_\_  
NJEIT  
Witness  
Name:

\_\_\_\_\_  
NJEIT Coordinating Officer  
Name: David Zimmer  
Title: Executive Director  
Telephone Number: 609-219-8600

\_\_\_\_\_  
Date

\_\_\_\_\_  
Entity Witness  
Name:

\_\_\_\_\_  
Chief Elected/Appointed Official  
or Chief Executive Officer  
Name:  
Title:  
Telephone Number:

\_\_\_\_\_  
Date