



New Jersey Environmental Infrastructure Trust  
3131 Princeton Pike  
Building 4 Suite 216  
Lawrenceville, NJ 08648-2201



Robert A. Briant, Jr., Vice Chairman  
Roger Ellis, Treasurer  
Mark Longo, Secretary  
Ford M. Scudder, State Treasurer  
Bob Martin, DEP Commissioner  
Charles A. Richman, DCA Commissioner  
David E. Zimmer, Executive Director

January 11, 2018

Honorable Chris Christie  
Governor of the State of New Jersey  
State House  
PO Box 001  
Trenton, New Jersey 08625

Dear Governor Christie:

In accordance with the provisions of the New Jersey Environmental Infrastructure Trust Act, I hereby transmit for your review and consideration the minutes of the January 11, 2018 meeting of the New Jersey Environmental Infrastructure Trust. The New Jersey Environmental Infrastructure Trust Act provides that the Governor has ten days from the delivery of the minutes, excluding weekends and holidays, to review and accept such minutes. In the event that the minutes are not acted upon within the statutory time frame by you, the minutes become effective automatically.

Sincerely,

Mark Longo  
Secretary

Enclosure

Cc: Honorable Stephen Sweeney, President of the Senate  
Honorable Vincent Prieto, Speaker of the General Assembly



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**1/11/2018**

**NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST**

**OPEN PUBLIC MEETING**

Thursday, January 11, 2018

**1. CALL TO ORDER:**

A meeting of the New Jersey Environmental Infrastructure Trust was convened on Thursday, January 11, 2018 in the conference room of 3131 Princeton Pike, Building 4, Suite 216, Lawrenceville, New Jersey. Vice Chairman Briant called the meeting to order at 10:05 a.m.

**2. OPEN PUBLIC MEETING ACT STATEMENT:**

Executive Director Zimmer read the Open Public Meeting Act Statement into the record.

**3. ROLL CALL:**

Ms. Nancy Collazo conducted roll call to which Mr. Briant, Mr. Longo, Mr. Ellis, and Ms. Putnam all responded affirmatively.

**DIRECTORS**

Robert A. Briant, Jr., Vice Chairman  
Mark Longo, Secretary  
Roger Ellis, Treasurer  
Michele Putnam  
(for DEP Commissioner Martin)

**OTHERS**

David E. Zimmer, Executive Director  
Frank Scangarella, Assistant Director  
Lauren Seidman Kaltman, Chief Financial Officer  
Judy Karp, Legal and Compliance Officer  
John Hansbury, Chief Budget Officer  
Eugene Chebra, DEP, Municipal Finance & Construction Element  
Scott Shymon, DEP, Municipal Finance & Construction Element  
Tyler Yingling, Governor's Authorities Unit  
Robert Purcell, Deputy Attorney General  
Richard Nolan, McCarter & English LLP  
Geoffrey Stewart, Public Financial Management

#### **4. APPROVAL OF THE MINUTES:**

Vice Chairman Briant opened discussion of the minutes of the Trust's December 2017 Board meeting.

There were no comments or questions. Vice Chairman Briant requested a motion for approval.

Mr. Longo moved for the approval of the minutes. Mr. Ellis seconded the motion. The motion was carried 4 to 0 with 0 abstentions.

#### **5. ANNOUNCEMENTS:**

Executive Director Zimmer summarized a number of the substantive events that have occurred since the last Board meeting and the related correspondence which was issued over the same time period:

- On January 5, 2018, Executive Director Zimmer participated, as a member, in the Jersey Water Works' quarterly Steering Committee meeting;
- On December 28, 2017, Executive Director Zimmer, Chief Financial Officer Kaltman, and DEP Assistant Director, Gene Chebra met with Planning Consultant, Tiffany Bohlin, to discuss potential financing for a Harrison redevelop project involving green and gray infrastructure;
- The next Trust Board meeting is scheduled for Thursday, February 8, 2018 at 10:00 am at the Trust's offices.

A copy of the announcements are available on the Trust's webpage under the Recent Board Meeting Documents tab. <https://njeit.org/agenda> (locate "Meeting Date", then select "Minutes", the announcements will be at the end of the file.)

There were no comments or questions.

#### **6. PUBLIC COMMENTS:**

Vice Chairman Briant invited comments from the public. There were no comments.

#### **7. UNFINISHED BUSINESS:**

- A. Mr. Shymon, of the NJDEP's Municipal Finance and Construction Element, reported that there are 252 active projects totaling \$1,281,487,440 and 1236 closed projects with loans outstanding totaling \$5,739,537,165 for a grand total of 1488 projects at \$7,021,024,605.

- B. Assistant Director Scangarella discussed the SFY2018 Short and Long-Term Financing Loan Programs and presented the following tables:

**SFY2018 Financing Program:**

**Outstanding Project Status:**

Purple	Total Projects Certified in FY18	40	\$271,516,263
Green	Projects Received Auth. to Advertise	27	\$217,340,000
Yellow	Projects Under Review	124	\$923,973,023
Orange	Project Description Page Only	116	\$977,908,601
Lt. Red	Inactive Project - Reactivation Date	1029	\$177,736,432
Dk. Red	Inactive Project - No Reactivation Date	83	\$246,523,485
	Total Active Pre-Construction Award	151	\$1,141,313,023

**Forecast of SFY2018 Operable Segment Certifications:**

			Assumes inclusion of 8 projects to be certified by NJDEP week of 1/1/18	Count
1	Project \$ certified to date:	\$271,516,263		40
2	ATAwards issued for which no certs issued to date:	\$3,700,000		1
3	ATAwards issued for which no ATAwards issued to date:	\$184,290,000		18
4	Forecast of projects targeted to receive ATAwards by 3/1/2018:	<u>\$73,831,000</u>		8
	<b>Total Certified in SFY2018:</b>	<b>\$533,337,263</b>		67

Mr. Briant and Ms. Putnam congratulated the DEP and EIT staff for all the efforts to create the presented information. Executive Director Zimmer credited Ms. Putnam for requesting this report. Mr. Briant also brought up a concern about borrowers that receive Authorization to Advertise from the DEP that then delay or do not take action. Mr. Chebra stated a 90-day action requirement was implemented in October 2017.

There were no further comments or questions.

- C. Executive Director Zimmer reported on the status of the Trust's outstanding Requests for Proposals (RFPs):

- There was no activity on outstanding Requests for Proposals on which to report

D. Executive Director Zimmer next reported on the changes to the Construction and SAIL Loan Programs:

APPLICATIONS – 3 new applications received for Construction Loan financing, totaling **\$55.4 M**

- 32 loan applications outstanding totaling **\$366.3 M** (includes SAIL)

CLOSINGS – 8 loan closings since the December Board meeting totaling **\$13.9 M**

- 84 closed loans with Certified Operable Segment of **\$544 M** (includes SAIL) and an additional **\$42.5 M** of Operable Segments remaining to be certified

DISBURSEMENTS – **\$21.9 M** to 30 projects for construction expenses

- To date **\$199.4 M** of short-term funds to 83 projects (**36.65%** of closed S-T loans)

The Construction and SAIL Loan report was provided to the Board of Directors of the Trust in satisfaction of the requirements of Section 11 of the authorizing Resolution No. 17-11 adopted on February 15, 2017.

There were no comments or questions.

E. Executive Director Zimmer introduced CFO Lauren Kaltman to present the status of the Aged Inventory Report. Ms. Kaltman stated that as of January 1, 2017 the Program had a total of 35 loans still under construction issued in SFY2014 or earlier and that the Program had facilitated the successful completion of construction and closed 21 of these aged loans over the previous year.

F. Executive Director Zimmer reported on the Program’s Loan Production by SFY and informed the Board he would make this report to them quarterly.

## 8. NEW BUSINESS:

A. Executive Director Zimmer introduced the Trust’s Chief Budget Officer Hansbury to present Resolution No. 18-01 accepting the November 2017 Treasurer’s Report.

Revenues earned in November 2017:	\$ 567,202		
YTD Total Revenues Earned:	\$ 2,568,613	102	% of Budget
YTD Total Revenues Budgeted:	\$ 2,512,188		
Expenses Incurred in November 2017:	\$ 536,215		
YTD Total Expenses Incurred:	\$ 2,389,314	100	% of Budget
YTD Total Expenses Budgeted:	\$ 2,384,999		
<hr/>			
Difference YTD v. Budgeted YTD:	\$ 52,100	Unanticipated Excess cash flow	

Chief Budget Officer Hansbury asked if there were any comments or questions. Hearing none, Vice Chairman Briant requested a motion for approval.

The resolution was moved for adoption by Ms. Putnam and seconded by Mr. Ellis.  
The motion was carried 4 to 0 with 0 abstentions.

- B. Executive Director Zimmer introduced Assistant Director Scangarella to present Resolution No. 18-02 authorizing the Issuance of an RFP for Internal Control Auditor Services as the Trust's current contract terminates on March 3, 2018. The Resolution authorizes the Trust to issue an RFP to procure Internal Controls Audit Services on an on-going/maintenance basis for a two-year period with the option to extend an additional year upon further Board action.

Assistant Director Scangarella asked if there were any comments or questions. Hearing none, Vice Chairman Briant requested a motion for approval.

The resolution was moved for adoption by Mr. Longo and seconded by Ms. Putnam.  
The motion was carried 4 to 0 with 0 abstentions.

- C. Executive Director Zimmer introduced Resolution No. 18-03 Amending and Restating Resolution No. 17-11 authorizing the implementation of the State Fiscal Year 2018 Construction Financing Program.

Executive Director Zimmer asked if there were any comments or questions. Hearing none, Vice Chairman Briant requested a motion for approval.

The resolution was moved for adoption by Mr. Ellis and seconded by Ms. Putnam.  
The motion was carried 4 to 0 with 0 abstentions.

- D. Executive Director Zimmer introduced Resolution No. 18-04 authorizing the implementation of the State Fiscal Year 2019 Construction Financing Program pursuant to which the Trust will make Construction Loans to qualifying Borrowers to finance the costs of projects in SFY2019. Modifications were made relative to the SFY2018 Program including, increasing the authorized maximum amount of each Construction Loan from \$10 million to \$15 million without requiring prior board approval, and providing specificity to the scope of activity authorized with respect to securing short-term private funding. The Resolution also adjusts the timing of the reporting requirement to the Board after the close of a short-term loan from reporting the closing of short term loans to the Board at the meeting immediately following the loan closing, to reporting all loans made in the prior calendar month.

Executive Director Zimmer asked if there were any comments or questions. Hearing none, Vice Chairman Briant requested a motion for approval

The resolution was moved for adoption by Ms. Putnam and seconded by Mr. Longo.  
The motion was carried 4 to 0 with 0 abstentions.

- E. Executive Director Zimmer introduced Chief Financial Officer Kaltman to present Resolution No. 18-05 authorizing the Trust to issue loans in State Fiscal Year 2019 under the Small System Loan Program, also known as the NANO Program, to small drinking water systems serving populations of 10,000 or fewer. The SFY2019 NANO Program includes principal forgiveness in an amount equal to 50% of a borrower's project costs up to \$1 million with a twenty-five percent (25%) NJDEP zero percent interest

loan and a twenty-five percent (25%) market-rate Trust loan. The Resolution authorizes NANO loans to be made by the Trust and the NJDEP in an aggregate amount not to exceed \$4 million plus any funds remaining from any prior year NANO Program. The Resolution also provides that NANO funding in SFY2019 to any individual borrower shall be not less than \$100,000 nor greater than \$1 million and is generally consistent with respect to the SFY2018 NANO Program.

Chief Financial Officer Kaltman asked if there were any comments or questions. Hearing none, Vice Chairman Briant requested a motion for approval.

The resolution was moved for adoption by Ms. Putnam and seconded by Mr. Ellis. The motion was carried 4 to 0 with 0 abstentions.

- F. Executive Director Zimmer introduced Assistant Director Scangarella to present Resolution No. 18-06 authorizing a SFY2018 and SFY2019 NJEIFP Construction Financing Program Loan to Cumberland County for project # S340438-01, for the construction of wastewater infrastructure in Downe Township for an amount not to exceed \$16 million.

Assistant Director Scangarella asked if there were any comments or questions. Hearing none, Vice Chairman Briant requested a motion for approval.

The resolution was moved for adoption by Mr. Ellis and seconded by Mr. Longo. The motion was carried 4 to 0 with 0 abstentions.

## **9. EXECUTIVE SESSION:**

Vice Chairman Briant asked if there was a need for an Executive Session. Executive Director Zimmer responded there was not.

Vice Chairman Briant asked Executive Director Zimmer if there was any additional business. Mr. Zimmer briefly recognized and thanked DEP and EIT staff for all their past accomplishments.

Vice Chairman Briant then asked for a motion for an adjournment.

Mr. Ellis moved to adjourn the meeting. The motion was seconded by Mr. Longo. The motion was carried 4 to 0 with 0 abstentions.

The meeting was adjourned at 11:00 am.

**RESOLUTION NO. 18 - 01**

**RESOLUTION AUTHORIZING APPROVAL OF THE  
NOVEMBER 2017 TREASURER'S REPORT**

**WHEREAS**, the New Jersey Environmental Infrastructure Trust (the "Trust") has reviewed the Treasurer's Report for November 2017; and

**WHEREAS**, the Trust has placed in its files certain correspondence relating to expenses incurred in relation to the Trust.

**NOW THEREFORE, BE IT RESOLVED**, that the Trust hereby accepts the Treasurer's Report for November 2017 and requests that the same be entered into the record.

Adopted Date: January 11, 2018

Motion Made By: Michele Putnam

Motion Seconded By: Roger Ellis

Ayes: 4

Nays: 0

Abstentions: 0



**RESOLUTION NO. 18 – 02**

**RESOLUTION OF THE TRUST AUTHORIZING THE ISSUANCE OF A REQUEST FOR PROPOSALS FOR INTERNAL CONTROL AUDITING SERVICES**

**WHEREAS**, the New Jersey Environmental Infrastructure Trust (the "Trust") is organized and existing under the New Jersey Environmental Infrastructure Trust Act, constituting Chapter 334 of the Pamphlet Laws of 1985 of the State of New Jersey (codified at N.J.S.A, 58:11B-1 et seq.), as the same may from time to time be amended and supplemented (the "Act"); and

**WHEREAS**, pursuant to Section 5(l) of the Act, the Trust is authorized to engage the services of advisors; and

**WHEREAS**, to ensure that the Trust is performing its duties effectively and efficiently and in a diligent manner that minimizes risk to the Trust there is a need for the Trust to procure the services of a professional accounting firm to perform an Internal Control Audit; and

**WHEREAS**, pursuant to Trust resolution No. 15-11 the current Internal Control Auditing contract expires on March 3, 2018; and

**WHEREAS**, the current and prior Internal Control Auditing firms have 1) conducted a high level risk assessment and evaluation of the Trust's primary business process and operational functions and risks, 2) developed a business process detail for each risk category, 3) identified existing internal controls to mitigate risks, 4) identified process gaps, weaknesses or opportunities for improvement, 5) evaluated and refined job descriptions, and 6) performed design and operational effectiveness testing of Trust controls; and

**WHEREAS**, there are more operations to be tested and key policies procedures and accounting processes to be revised, and there exists a continued need for ongoing internal control auditing at the Trust.

**NOW THEREFORE BE IT RESOLVED THAT**, the Trust hereby authorizes the Executive Director, in consultation with the Audit Committee, to competitively procure such professional accounting firms to perform Internal Control Auditing services; and

**BE IT FURTHER RESOLVED THAT** the RFP will be in a form substantially similar to the Draft RFP attached hereto as Appendix A; and

**BE IT FURTHER RESOLVED THAT** the Executive Director is further authorized to solicit proposals, convene an evaluation committee to independently review and rank the proposals received and to make a recommendation to the Board for the selection of a firm for Internal Control Auditing Services for contract approval for a two-year contract with an option for one (1) additional one-year period at the discretion of the Executive Director in consultation with the Chairman.

**BE IT FURTHER RESOLVED THAT** the Executive Director is authorized to take all other

actions consistent with Trust Procurement Policy 4.00 "Purchase of Goods and Services" to procure the services of a professional accounting firm to perform Internal Control Auditing Services.

Adopted Date: January 11, 2018

Motion Made By: Mark Longo

Motion Seconded By: Michele Putnam

Ayes: 4

Nays: 0

Abstentions: 0



**Request for Proposal**  
**Internal Controls Audit Services**

Issued by the  
New Jersey Environmental Infrastructure Trust

Date Issued:  
**January 30, 2018**

Questions and Answer Cut-Off Date:  
**5:00PM EST February 9, 2018**

Proposals Due Date:  
**12:00 PM EST February 28, 2018**

In the Office of the Executive Director  
3131 Princeton Pike, Building 4, Suite 216  
Lawrenceville, NJ 08648  
(609) 219-8600

Please Label Proposals with Firm's Name and  
**"Proposal for Internal Controls Audit Services"**

**NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST  
REQUEST FOR PROPOSAL  
INTERNAL CONTROLS AUDITING SERVICES**

**I. OBJECTIVE**

The New Jersey Environmental Infrastructure Trust (“NJEIT”) is looking to procure the services of an Internal Controls Auditing Firm. Pursuant to this request for proposal, the NJEIT shall select an Internal Controls Auditing Firm from the list of responsive bidders as prescribed in Section IV.

**II. NJEIT / PROGRAM BACKGROUND**

**a. Powers and Structure**

The NJEIT was organized pursuant to N.J.S.A. 58:11B-1 et seq., in 1986 as an independent State Financing authority to issue revenue bonds, to make loans, and guarantee debt issued by borrowers for the construction of environmental infrastructure projects. The Trust consists of a seven-member board of directors. The powers of the Trust are vested in the Board of Directors of the Trust. However, the minutes of all Trust meetings must be delivered to the Governor and Legislature. The Legislature may provide written comment to the Governor and the Governor may veto any Trust action within 10 business days. No Trust actions initiating the issuance of bonds, notes, or other obligations can be effective without the prior written approval of both the Governor and State Treasurer.

The Trust's enabling legislation requires extensive legislative oversight of the Trust, including fiscal accountability and control over its operating expenses, loan and debt guarantee activities, and borrowing and debt obligations. No funds from State or federal sources or State bond issues are made available to the Trust unless appropriated by the Legislature. The Trust may not expend any funds for environmental infrastructure projects unless the expenditure is authorized by an appropriations act approved by the Legislature.

The Department of Environmental Protection and the Trust must submit a joint annual project priority list for environmental infrastructure projects to the Legislature by January 15 of each year. The list must be developed in accordance with the federal government's priority ranking system, which rates projects on environmental need.

The Trust must also submit a proposed financial plan to implement the financing of the projects on the project priority list to the Legislature by May 15 of each year. The plan must contain an enumeration of the revenue bonds and loans (including the terms and conditions thereof and the anticipated ranges of interest rate and repayment schedules), and loan guarantees which the Trust intends to execute, together with a financial statement covering its proposed operations during the forthcoming fiscal year.

Passage of Legislative Bills appropriating funds to the Department of Environmental Protection and authorizing the Trust to sell bonds is required prior to financing environmental infrastructure

projects. In addition, the financial plan must be approved by adoption of concurrent resolutions by both the Senate and Assembly.

The Trust is authorized, among other things: (i) to borrow money and issue bonds, notes and other obligations and to secure the same by its revenues and other funds and to provide for the refunding thereof; (ii) to obtain as security or to provide liquidity for payment of its bonds, notes or other obligations, lines of credit, letters of credit and other security agreements; (iii) to invest any moneys not required for immediate use or disbursement, including proceeds from the sale of its bonds, notes, or other obligations, in any obligations, securities and other investments in accordance with the rules and regulations of the State Investment Council; (iv) to receive and accept aid or contributions from any source of property, money, labor or other things of value, to be held, used and applied to carry out the purposes of the Trust Act; (v) to acquire, lease, hold and dispose of real and personal property or any interest therein in the exercise of its powers and the performance of its duties under the Trust Act. The Trust may issue at public sale up to \$2.6 billion, or more at the discretion of the Legislature, of its own bonds.

Through the New Jersey Environmental Infrastructure Financing Program (“NJEIFP” or “Financing Program”), the Department of Environmental Protection (“DEP”) and the NJEIT jointly issue short-term and long-term loans to provide funding for all aspects, phases and components of designing and building environmental infrastructure projects. NJEIFP Loans are issued upon approval of applicable NJEIFP program requirements for costs incurred for designing and constructing projects (and land preservation) that enhance and protect ground and surface water resources and ensure safe drinking water. Generally, either the NJEIT or the Department may finance up to 75% of the allowable project costs.

Legislative amendments to the NJEIT Enabling Act establish the New Jersey Transportation Infrastructure Financing Program to make loans to finance the cost of transportation projects. The Trust anticipates commencing the development of the New Jersey Transportation Infrastructure Financing Program in the Spring of 2018, and issuing one or more series of bonds within the subsequent two fiscal years.

## **b. Information relevant to Customized Procurement**

In recent years, the NJEIFP has experienced a tremendous amount of popularity with participation rates at all time highs. The affect of this growth in participation, as well as the introduction of new technologies, has necessitated revisions to Trust policies and procedures, placing increased strain on the Trust’s resources. In addition to keeping pace with growth, the Trust must ensure that its resources are used in the most efficient and effective manner possible. To ensure all Trust assets are properly safeguarded and that the Trust’s financials provide timely, accurate and reliable information for its users, the Trust is seeking a qualified firm (the “Consultant”) to perform an internal controls audit.

This procurement is to engage a consultant for Phase IV of the Trust’s internal controls audit. Three firms were separately retained to conduct Phases I through III of the Audit. In Phase I of the audit, the Trust retained a firm which conducted a high level risk assessment of the Trust’s primary business processes and operational functions. One-hundred and eight (108) business processes/

audit areas were identified in the following thirteen (13) categories (hereafter “Risk Categories”):

1. New Program Development and Compliance;
2. Loan Application;
3. Bond Issuance and Compliance;
4. Requisition and Disbursement to Borrowers;
5. Billing and Receipts of Loan Repayments and Administrative Fees;
6. Procurement of Materials and Services;
7. Accounts Payable and Related Disbursements;
8. Investment and Cash Management;
9. Human Resources;
10. Accounting close and Financing Reporting;
11. Entity Level Controls;
12. Information Technology general controls; and
13. Business Continuity Planning.

A description of the summary of the Risk Categories is set forth in Appendix **Exhibit A1**. Each business process/risk was evaluated relative to its significance to the Trust’s business operations, and processes and related risks were prioritized based on ratings by the firm and the Trust. The Trust executed a one-year contract for Phase II services commencing March 1, 2014. In Phase II, the following tasks were performed as more fully set forth in Appendix **Exhibit A2**:

- Reviewed and revised the Risk Categories;
- Developed a Business Process detail for each Risk Category;
- Reviewed Laws/ Policies and Procedures related to each Business Process;
- Identified Existing Internal Controls to mitigate the risks;
- Developed Observations and Recommendations.

In Phase III, the Consultant made significant progress in completing the Tasks developed in Phase II utilizing the outputs from Phase II including the following deliverables:

- Identified process gaps, weaknesses, or opportunities for improvement.
- Worked with Trust personnel to document the process gaps, weaknesses, or opportunities for improvement and tracked remediation activity and incorporate such activities into existing Trust documentation.
- Advising the Trust on its use of technology and controls in place around and within its technology to facilitate its business, operations, and accounting processes, while maintaining effective controls of key components of the processes such as enforcing segregation of duties.
- Evaluated and refined job descriptions to ensure they accurately reflect the requirements of each position including those requirements in maintaining the internal control structure of the Trust.
- Evaluated the internal control structure of the Trust at all levels and throughout the various departments, including the mechanisms and timeliness of communications and

reporting, and maintenance of adequate segregation of duties and authority in performing key functions.

- Performed design and operational effectiveness testing of those controls that were in place and capable of testing through evidence of implementation pursuant to policies and procedures to determine if the controls that were communicated are both in place and operationally sound.
- Reviewed whether the Board of Directors and key management personnel are adequately involved and notified of key risks and control issues on a timely basis, and assisted in the refinement of the internal control structure to ensure that mechanisms are in place to ensure that these key personnel are appropriately informed and involved.
- Evaluated the procurement and budgeting processes to ensure that they are reasonable, meet appropriate requirements and/or best practices, and require appropriate oversight throughout the process.
- Assessed applicable human resource related practices to determine if they facilitate the Trust's interest in maintaining an adequate control environment by providing a foundation for the integrity and ethical values of the Trust and they have appropriate continuing training and development of personnel to reinforce such values.

In Phase IV, the Consultant will be expected to complete the Tasks developed in Phase III utilizing the outputs from Phase III and meet the following deliverables:

- Perform and conclude on test of design and operational effectiveness for those previously untested controls which management has identified as having been remediated.
- Formulate findings and recommendations based on such test results and obtain management's remediation responses thereto.
- Revise the existing key policies, procedures and accounting manual for material changes in the Trust's operating and accounting environments.
- Work with Trust personnel to track remediation activities and incorporate such activities into existing Trust documentation.
- Assist the Trust in developing an internal control manual for the Trust's use in managing and monitoring its controls on an ongoing basis.
- Provide guidance to the Trust in managing and monitoring the Trust's internal audit function.
- Update the Trust's risk assessment developed during Phase I to reflect any changes based on the current environment.
- Develop a three-year internal audit plan based on the risk assessment, to perform an ongoing, risk-based assessment of the design and operational effectiveness of internal controls.
- Execute agreed upon internal audit plan on an annual basis.
- Provide other internal controls assistance as directed by the Trust.

The Trust expects the Consultant's recommendations to be supported by findings and conclusions. The Consultant's in-depth understanding of public sector finance and accounting and the

associated issues is critical to the services provided pursuant to this procurement. The proposal should reflect the Consultant's understanding of these issues and provide discussion of how they would likely affect the Trust.

**d. Minimum Qualifications**

1. The Consultant is required to have performed continuous auditing and accounting and/or internal auditing and fraud detection for a minimum of five (5) years.

a. The Consultant should indicate experience in providing these services to state and municipal agencies or public/private retirement systems.

b. Note: Preference will be shown to Consultants who operate in the State of New Jersey.

2. The Consultant is required to be a member of the American Institute of Certified Public Accountants (AICPA). The Consultant should also indicate membership in any other comparable control review programs (peer review).

3. The Consultant is required to list any and all audits performed for Sarbanes-Oxley mandated compliance reviews in the last five (5) years.

4. The Consultant is required to have a minimum of \$xxxx in total annual revenues directly attributable to internal control services.

**SOLICITATION SCHEDULE/PROCUREMENT SCHEDULE (SUBJECT TO CHANGE AS REQUIRED)**

<b>RFP published and distributed:</b>	<b>January 30, 2018</b>
<b>Question Cut-Off Date:</b>	<b>5:00 pm EST, February 9, 2018</b>
<b>Response to RFP Questions:</b>	<b>February 14, 2018</b>
<b>Proposals due:</b>	<b>12:00 noon EST, February 28, 2018</b>
<b>Finalists interviews in person or via conference call:</b>	<b>Week of, March 5, 2018</b>
<b>Board of Directors approval:</b>	<b>March 8, 2018</b>
<b>Contract term:</b>	<b>March 26, 2018 to February 28, 2020 with a one year option to renew</b>

**QUESTION AND ANSWER PROCEDURE**

The Trust will accept questions and inquiries from all potential bidders electronically via email. To submit a question, please email John Hansbury, Chief Budget Officer, at the following email address:

[RFP@NJEIT.ORG](mailto:RFP@NJEIT.ORG)



**Please note that the “subject” line of your e-mail must specifically reference this RFP as follows: “RFP for NJEIT Internal Control Auditing Services.”**

Questions should be directly tied to the RFP and asked in consecutive order, from beginning to end, following the organization of the RFP. Each question should begin by referencing the RFP page number and section number to which it relates.

Bidders are not to contact the Trust directly, in person, or by telephone concerning this RFP, only via email as described above.

The cut-off date for electronic questions and inquiries relating to this RFP is indicated on the cover sheet. Addenda to this RFP, if any, will be posted on the Trust website, [www.njeit.org](http://www.njeit.org) after the cut-off date.

**Questions will be accepted until 5:00 pm EST, 2018.**

### **III. SCOPE OF WORK**

The consultant shall:

In Phase IV, the Consultant will be expected to complete the Tasks developed in Phase III utilizing the outputs from Phase III and meet the following deliverables:

1. Perform design and operational effectiveness testing of those previously untested controls that are capable of testing through evidence of implementation pursuant to policies and procedures.
2. Formulate findings and recommendations based on such test results and management’s response thereto.
3. Revise the existing policies, procedures and manuals to ensure that they are up-to-date.
4. Work with Trust personnel to track remediation activities and incorporate such activities into existing Trust documentation.
5. Assist the Trust in developing an internal control manual for the Trust’s use in managing and monitoring its controls on an ongoing basis.
6. Implement and annually assess those internal controls required of the Internal control auditor pursuant to the internal control manual within the allotted budget.

#### **Deliverables:**

##### **Reports**

**Weekly Informal Reports:** By the first of each week, the Consultant will provide written notice of the interviews and site visits scheduled for the next following week to the Staff Project Officer for review and approval. It will be important for the Consultant to closely coordinate the schedule for interviews and site visits with each individual’s supervisor and

the Staff Project Officer in order to minimize disruption of daily management activities.

**Monthly Written Status Reports:** Based on the task plan submitted with the proposal, the monthly reports should consist of two parts:

A. General narrative briefly describing progress to date and outlining reasons for any deviations from the task plan schedule. This narrative should also contain a statement indicating the status of the project in relation to time -- ahead, behind, or on schedule.

B. Status sheet indicating actual hours logged by category (i.e., project manager, senior analyst or auditor, junior analyst or auditor, etc.), by Consultant, material and supplies cost, and other costs, showing percentage of each in relation to proposal costs. Monthly reports should be in the hands of the Staff Project Officer and The Trust's Coordinator by the tenth working day following the month's end and shall be submitted for any month worked.

### **Draft/Final Report**

A final report must evolve from a draft report prepared at least thirty (30) days prior to the submission of the final report. The draft report should contain functional area task reports, a management summary, which includes findings of operating effectiveness and efficiency, and recommendations. All reports provided to the Trust (task reports, draft report, final report) must be fully footnoted. The Trust Staff and the Consultant will review the findings of each task report at a roundtable meeting prior to the issuance of each task report to the Staff Project Officer. Task reports shall be submitted early enough in the project to allow for additional in-depth analyses and subsequent revisions. The Trust's written comments shall be submitted to the Consultant within ten (10) working days after it receives each task report so that the Consultant can consider any changes of fact, conclusions, or recommendations before completing the draft report. After review of the task reports has been completed, the Consultant will be required to prepare a draft report for review by the Trust.

The Trust requires the final report to be in a narrative form and include terminology that will be meaningful to the Trust's management and others generally familiar with the subject areas:

1. General Statement and Summary;
2. Findings and Conclusions with Respect to the Primary Objectives of the Review;
3. Recommendations, if any, relating specifically to the Task Areas. Findings, conclusions and recommendations must be justified and accompanied by adequate supporting information. The final report should consist of a chapter describing the project, a summary chapter that ties all the issues together and chapters for each Task Area.

The Trust expects an objective and balanced report to be prepared.

The Consultant shall provide the Trust with ten (10) bound copies, one electronic copy, and one unbound, copy-ready copy of the final report. In addition, the Trust shall be provided with a total of five (5) copies, one electronic copy, and one unbound, copy-ready copy of the final report.

### **Action Plans**

It is the Trust's intent to implement the Consultant's appropriate recommendations as expeditiously as possible, and to develop a dialogue between the Trust and the Consultant regarding the proper action steps necessary to successfully implement each recommendation.

The Consultant shall be responsible for the development of action plans to implement each recommendation and will be required to review the appropriateness of the detailed action steps developed by the Trust. An example of the action plan format desired by the Trust is included with this RFP. The process of developing action plans will therefore be expected to include the following events:

1. The Consultant will be responsible for developing draft action plans which include the background, the priority, the improvement baseline intended, and the estimated one-time and annual costs and benefits for each recommendation.
2. The Trust will then be responsible for reviewing the Consultant's draft action plans, and shall prepare responses to all the action plans. Any recommendations may be considered in a future case for the Trust. The Trust's response shall include a statement addressing each recommendation, which either adopts the recommendation, adopts it with exception, or rejects the recommendation. The response shall detail steps (as well as the start date and completion date for each step) necessary to implement each recommendation adopted or adopted with exception by the Trust. For any recommendations rejected, a detailed basis for rejection shall be provided.
3. The Consultant will then be responsible for reviewing the Trust's comments and action steps and formally commenting (in the finalized action plans) on the appropriateness of the proposed implementation activities, as well as clarifying the intent of the recommendations, if necessary.
4. The Consultant shall be responsible for printing the finalized action plans and shall provide the Trust with three (3) bound copies, plus one electronic copy, and one unbound copy-ready edition for the finalized action plans.

## **IV. Evaluation**

### **a. Proposal Evaluation Committee**

Bid proposals will be evaluated by an Evaluation Committee composed of at least three staff

members of the Trust. The Evaluation Committee will complete its evaluation and recommend to the Board of Directors for award the responsible bidder(s) whose bid proposal, conforming to this RFP, is most advantageous to the Trust, price and other factors considered. The Evaluation Committee considers and assesses price, technical criteria, and other factors during the evaluation process.

b. Oral Presentation and/or Clarification of Bid Proposal

After the submission of bid proposals, unless requested by the Trust, contact with the Trust is limited to status inquiries only and such inquiries are only to be directed to the Project Manager. Any further contact or information about the proposal to the Project Manager or any other Trust official connected with the solicitation will be considered an impermissible supplementation of the bidder's bid proposal.

A bidder may be required to give an oral presentation to the Evaluation Committee concerning its bid proposal. The Evaluation Committee may also require a bidder to submit written responses to questions regarding its bid proposal.

The purpose of such communication with a bidder, either through an oral presentation or a letter of clarification, is to provide an opportunity for the bidder to clarify or elaborate on its bid proposal. Original bid proposals submitted, however, cannot be supplemented, changed, or corrected in any way. No comments regarding other bid proposals are permitted. Bidders may not attend presentations made by their competitors.

It is within the Evaluation Committee's discretion whether to require a bidder to give an oral presentation or require a bidder to submit written responses to questions regarding its bid proposal. Action by the Evaluation Committee in this regard should not be construed to imply acceptance or rejection of a bid proposal. The Project Manager will be the sole point of contact regarding any request for an oral presentation or clarification.

c. Evaluation Criteria

The bidder's Technical Proposals and Cost Proposals shall be evaluated separately based upon the following criteria.

d. Technical Evaluation Criteria

The evaluation committee will review all Technical Proposals in light of the major evaluation criteria and corresponding weights set forth below, which are not in order of importance:

1. Required Proposal Format. The quality of the bidder's responses, general approach and plans in meeting the requirements of this RFP. (3)
2. The bidder's detailed work plan will be evaluated for appropriateness and thoroughness. Each individual task description will be reviewed and will contribute to the overall grading of the required work plan. (6)

3. The bidder's documented experience in successfully completing contracts of a similar size and scope to the work required by this RFP, and documented experience completing similar contracts for other state and local government agencies. This includes the submission of required references. (5)

4. The qualifications and experience of the bidder's management, supervisory or other key personnel assigned to the contract, with emphasis on documented experience in successfully completing work on contracts of similar size and scope to the work required by this RFP. (5)

5. The overall ability of the bidder to mobilize, undertake and successfully complete the contract. This judgment will include, but not be limited to, the following factors: the number and qualifications of management, supervisory and other staff proposed by the bidder to complete the contract, the availability and commitment to the contract of the bidder's management, supervisory and other staff proposed and the bidder's contract management plan, including the bidder's contract organizational chart. (3)

6. The Firm's presence in New Jersey. (1)

A copy of the Procurement Ranking Sheet outlining the above criteria is included as Attachment **Exhibit X**)

e. Cost Proposal Criteria

For evaluation purposes, the bidder's Cost Proposal will be ranked according to the total price submitted on the completed Price Sheet (sample attached to this RFP).

f. Bid Discrepancies

In evaluating bids, discrepancies between words and figures will be resolved in favor of words. Discrepancies between unit prices and totals of unit prices will be resolved in favor of unit prices. Discrepancies in the multiplication of units of work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated total of multiplied unit prices and units of work and the actual total will be resolved in favor of the actual total. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the corrected sum of the column of figures.

**V. Technical Proposal**

The Consultant's Technical Proposal should include the following:

Title Page bearing the RFP project title, as well as Consultant name, address, and contact information.

a. **Letter of transmittal**

State in succinct terms your understanding of the project presented in this RFP. Task descriptions are to be the guide in describing your technical plan for accomplishing the work plan. The task descriptions should be in sufficient depth to afford the Trust and its staff a thorough understanding of your work plan. The description should include an estimate of the number of hours each primary member of the review team will devote to each task, functional area, and special interest area. A proposal may be rejected if the work plan does not specifically detail how each of the task descriptions is to be accomplished.

**b. Business information**

1. Identification of the Consultant's form of business (whether individual, sole proprietor, corporation, non-profit corporation, partnership, limited liability company) and prime liaison (name, mailing address and telephone number) whom the Trust may contact regarding the proposal.
2. Number of years Consultant has been in business, as well as the number of years Consultant has performed the services specifically required by this RFP.
3. Statement of Consultant's intent to use subcontractors, and if so, the names and mailing addresses of committed subcontractors as well as a description of the scope and portions of the work each subcontractor will perform.
4. Disclosure of whether the Consultant has undergone within the past ten (10) years any mergers, acquisitions, sales or significant changes in partnership interests, and if so, an explanation providing relevant details. Include in this statement the likelihood of any mergers, acquisitions, sales or significant changes in partnership interests in the next three (3) years.
5. A statement of whether the Consultant or any of the Consultant's employees, agents, independent contractors, and/or subcontractors have been convicted of, pleaded guilty to, and/or pleaded *nolo contendere* to any felony, and if so, an explanation providing relevant details.
6. A statement of whether there is any pending litigation against the Consultant, and if such litigation exists, an attached opinion of counsel as to whether the pending litigation will impair the Consultant's performance in a contract under this RFP.
7. Provide a statement of whether the Consultant has filed (or had filed against it) within the past ten (10) years any bankruptcy or insolvency proceeding, whether voluntary or involuntary, or undergone the appointment of a receiver, Trustee, or assignee for the benefit of creditors, and if so, an explanation providing relevant details.
8. Provide a statement as to whether any of the Consultant's previous contracts with public agency clients were terminated prior to the expiration of the contract term, and if so, provide an explanation of the circumstances.
9. Provide a statement as to whether the Consultant or any of its officers, directors, and/or staff members proposed by the Consultant to perform work for the Trust have any possible conflict of

interest.

**c. Executive summary**

I. Time

For each task described in the “Scope of Services” section above, an estimate of the time required for completion shall be provided in schedule form. Show all audit tasks, the estimated hours to complete each task, and the total estimated hours to complete the audit. An estimate of the percentage of time spent on-site shall also be provided.

II. Location

The bidder should include the location of the bidder's office that will be responsible for managing the contract. The bidder should include the telephone number and name of the individual to contact.

III. Organization Chart (Contract Specific)

The bidder should include a contract organization chart, with names showing management, supervisory and other key personnel (including sub-vendor's management, supervisory or other key personnel) to be assigned to the contract. The chart should include the labor category and title of each such individual.

IV. Resumes

Detailed resumes should be submitted for all management, supervisory and key personnel to be assigned to the contract. Resumes should be structured to emphasize relevant qualifications and experience of these individuals in successfully completing contracts of a similar size and scope to those required by this RFP. Resumes should include the following:

- Clearly identify the individual's previous experience in completing similar contracts.
- Beginning and ending dates should be given for each similar contract.
- A description of the contract should be given and should demonstrate how the individual's work on the completed contract relates to the individual's ability to contribute to successfully providing the services required by this RFP.
- With respect to each similar contract, the bidder should include the name and address of each reference together with a person to contact for a reference check and a telephone number.

If an Agreement is awarded, the personnel assigned to conduct the review may not be changed without the written approval of the Trust or its designated representative. The Consultant will notify the Trust of any such requested personnel change and allow the Trust input before written approval for the change is approved.

V. Organization Chart (Entire Firm)

The bidder should include an organization chart showing the bidder’s entire organizational structure. This chart should show the relationship of the individuals assigned to the

contract to the bidder's overall organizational structure.

VI. Experience Of Bidder On Contracts Of Similar Size And Scope

The bidder should provide a comprehensive listing of contracts of similar size and scope that it has successfully completed, as evidence of the bidder's ability to successfully complete the services required by this RFP. Emphasis should be placed on contracts that are similar in size and scope to the work required by this RFP, which should include any New Jersey government entity. A description of all such contracts should be included and should show how such contracts relate to the ability of the firm to complete the services required by this RFP. For each such contract, the bidder should provide two names and telephone numbers of individuals for the other contract party. Beginning and ending dates should also be given for each contract.

The bidder must provide examples of prior management audits conducted by the bidder that demonstrate its capacity to fulfill the scope of work requirements for the Trust.

Provide information on the Consultant's history of providing the requested services. Address Consultant's experience in providing consulting or accounting services to state agencies, Consultant's experience in internal/financial auditing, evaluating and recommending implementation strategies, and Consultant methodologies and tools that will be used to expedite the delivery of the requested services. If applicable, provide a brief discussion of Consultant's experience in assisting clients with the implementation of recommendations arising from similar audit engagements.

A list of at least three (3) references from, state agencies, municipalities, not-for-profit organizations and publicly traded or privately held corporations willing to discuss with the Trust the Consultant's performance in providing services comparable to the services being sought by the Trust. Each reference must include the agency name and address; the name, title, and phone number of the contact person at the agency/company; the time period during which the services were provided; the name of the Consultant's lead auditor on the engagement; and a brief summary of the services provided.

VII. Financial Capability Of The Bidder

In order to provide the Trust with the ability to judge the bidder's financial capacity and capabilities to undertake and successfully complete the contract, the bidder should submit certified financial statements to include a balance sheet, income statement and statement of cash flow, and all applicable notes for the most recent calendar year or the bidder's most recent fiscal year. If certified financial statements are not available, the bidder should provide either a reviewed or compiled statement from an independent accountant setting forth the same information required for the certified financial statements, together with a certification from the Chief Executive Officer and the Chief Financial Officer, that the financial statements and other information included in the statements fairly present in all material respects the financial condition, results of operations and cash flows of the bidder



as of, and for, the periods presented in the statements. In addition, the bidder should submit a bank reference.

If the information is not supplied with the bid proposal, the Trust may still require the bidder to submit it. If the bidder fails to comply with the request within seven (7) business days, the Trust may deem the proposal non-responsive.

A bidder may designate specific financial information as not subject to disclosure when the bidder has a good faith legal/factual basis for such assertion. Bidder may submit specific financial documents in a separate, sealed package clearly marked "Confidential-Financial Information" along with the Bid Proposal.

The Trust reserves the right to make the determination to accept the assertion and shall so advise the bidder.

#### VIII. Program Management Approach

The bidder shall set forth its overall technical approach and plans to meet the requirements of the RFP in a narrative format. This narrative shall confirm that the bidder understands the objectives that the contract is intended to meet, the nature of the required work and the level of effort necessary to successfully complete the contract. This narrative should convince the Trust that the bidder's general approach and plans to undertake and complete the contract are appropriate to the tasks and subtasks involved. It should include a discussion of project management techniques, tools and practices, and a list of the end products that will be provided to the Trust throughout the project and at the conclusion of the project.

Mere reiterations of RFP tasks and subtasks are strongly discouraged, as they do not provide insight into the bidder's ability to complete the contract. The bidder's response to this section should be designed to convince the Trust that the bidder's detailed plans and approach proposed to complete the Scope of Work are realistic, attainable and appropriate and that the bidder's bid proposal will lead to successful contract completion.

A Contracted Management Auditing Firm will be engaged in accordance with The Trust's needs and requirements in accordance with the following process:

For this RFP each contractor shall respond with the following:

- A detailed proposal to perform the scope of work reflecting the requirements of the engagement for competitive price quotes in accordance with the audit specific requirements of section 2.0 of this Request for Proposals (RFP);
- A contract schedule that identifies the associated deliverable items to be submitted as evidence of completion of each task and/or sub-task;
- All inclusive hourly rate in addition to person-hour and/or labor category mix: A comprehensive chart showing the person-hours proposed to meet the requirements of the

request for competitive quotes. The chart shall be designed to reflect the tasks, sub-tasks, or other work elements required by the request for competitive quote. The chart shall set forth, for each task, sub-task or other work element, the total number of person-hours, by labor category, proposed to complete the contract. The hourly rates used for each labor category shall be the all-inclusive hourly rates specified in the contract; and

- A firm fixed price for the engagement based on the contract's all inclusive hourly rates and chart detailed above.

The Trust will review the responses and award the engagement to the contractor that offers the best value, price and other factors to the Trust.

### **SUBMISSION OF BID PROPOSAL**

In order to be considered for award, the bid proposal must be received by the Trust at the appropriate location by the required time. **ANY BID PROPOSAL NOT RECEIVED ON TIME AT THE LOCATION INDICATED BELOW WILL BE REJECTED. THE DATE AND TIME IS INDICATED ON THE COVER SHEET. THE LOCATION IS AS FOLLOWS:**

**NJEIT OFFICES  
3131 PRINCETON PIKE  
BUILDING 4, SUITE 216  
LAWRENCEVILLE, NEW JERSEY 08648**

Directions to the Trust can be found at the following web address: [www.njeit.org](http://www.njeit.org).

### **ACCEPTANCE**

After receipt of proposals, the Trust may request certain firms bidding on the project to appear before the Trust and the staff to provide an oral proposal briefing and to respond to questions. If an oral briefing is required, it will take place during the week of **March 5, 2018**. It is anticipated that the evaluation phase of the project will take six months to complete and culminate in the publication of a final report and a Management Audit Action Plan (MAAP) report. The project will begin on or about **March 26, 2018**. If the bidder thinks additional time is needed, justification should be supplied along with an estimate of additional time.

Appointment of the Internal Controls Audit Firm by the Trust is contingent upon the execution of an Agreement for Internal Controls Auditing Services. A sample contract is attached as Appendix **Exhibit B**.

### **PROPOSAL PREPARATION AND SUBMISSION**

#### **GENERAL**

The bidder is advised to thoroughly read and follow all instructions contained in this RFP, in

preparing and submitting its bid proposal.

### **BID PROPOSAL DELIVERY AND IDENTIFICATION**

In order to be considered, a bid proposal must arrive at the Trust Offices in accordance with the instructions included in this Request For Proposals.

**Trust procurement rules mandate that late bid proposals are ineligible for consideration.**

### **NUMBER OF BID PROPOSAL COPIES**

The bidder must submit **one (1) complete ORIGINAL bid proposal**, clearly marked as the “ORIGINAL” bid proposal. The bidder should submit **three (3) full, complete and exact copies** of the original. The copies requested are necessary in the evaluation of the bid proposal. A bidder failing to provide the requested number of copies will be charged the cost incurred by the Trust in producing the requested number of copies. It is suggested that the bidder make and retain a copy of its bid proposal.

### **BID PROPOSAL CONTENT**

Each proposal should be economically prepared, with emphasis on completeness and clarity of content. A proposal, as well as any reference material presented, must be written in English and charts, spreadsheets, and oversize exhibits are permissible. All proposal pages must be numbered.

Each response to this RFP must consist of a Technical Proposal and a Cost Proposal (as described below).

The Technical Proposal should be submitted in one volume and that volume divided into three (3) sections with tabs (separators), and the content of the material located behind each tab, as follows:

- **Section 1 - Forms**
- **Section 2 - Technical Proposal**
- **Section 3 - Organizational Support and Experience**

Each Consultant must submit its Technical Proposal to the Trust in a sealed package that is clearly marked “Technical Proposal in Response to RFP for Internal Controls Audit Services -- Do Not Open.” The package must contain:

- One (1) original and three (3) hard copies of the Technical Proposal;
- One (1) electronic “soft” copy (on a flash drive/stick) of the Technical Proposal – one folder containing the technical proposal in Microsoft Word format as submitted, and second folder containing the technical proposal in PDF format.

Each Consultant must submit its Cost proposal to the Trust in a separate sealed package that is

clearly marked "Cost Proposal in Response to RFP for Internal Controls Audit Services -- Do Not Open." The package must contain:

- One (1) original and three (3) hard copies of the Cost Proposal;
- One (1) electronic "soft" copy (on a flash drive/stick) of the Cost Proposal – containing the cost proposal as submitted in Microsoft Word and Excel format.

If the Consultant encloses the separately sealed proposals (as detailed above) in a larger package for mailing, the Consultant must clearly mark the outermost package:

"Contains Separately Sealed Technical and Cost Proposals for RFP for Internal Controls Audit Services "

The Trust must receive all written proposals in response to this RFP at the address specified in Section 1. **NOTE:** a Consultant may not deliver a proposal orally or by any means of electronic transmission.

**NOTICE: No pricing information shall be included in the Technical Proposal. Inclusion of such information in the Technical proposal shall render the full proposal disqualified from consideration.**

## **IX. Attachments**

### **a. Specific to RFP**

- i. Ranking Criteria
- ii. Price schedule
- iii. Standard Terms and Conditions

### **b. Required Forms**

- i. Ownership Disclosure Form
- ii. Disclosure of Investigations/Actions
- iii. MacBride Principles Certification
- iv. Disclosure of Investment Activities in Iran
- v. Affirmative Action Forms
- vi. NJ business registration certification (or interim registration) (N.J.S.A. 52:32-44)
- vii. Political contributions (Pay-to-Play); E.O. No. 117
- viii. Political Contributions Form for ELEC (N.J.S.A. 19:44A-20.13)
- ix. Certification of U.S. based work (E.O. No. 129 McGreevey)

### **c. Emergency Preparedness**

The Trust recognizes and acknowledges that the protection of its assets and business operations is a major responsibility to its employees, business associations, and other communities that it services. The Trust must be sure that all essential Consultants/contractors that provide critical business services to the Trust have planned for unforeseen emergencies and or disasters and that all aforementioned Consultants/contractors have a Business Continuity and Disaster Recovery Plan in place. To that end the Trust is requiring all bidders to provide responses to the following:

1. Does the firm have a Disaster Recovery Plan/Business Continuity Plan in place?
2. If yes, please attach a copy of the firm's plan, or at a minimum an executive summary. How often it is updated, and what assistance if any would be available to the Trust?
3. If no, please summarize how the firm plans to deal with a catastrophic event which might disrupt the firm's business operations and services.

**X. Fee Structure (Separate Envelope)**

The Cost Proposal shall be submitted in an envelope separately sealed from the technical proposal and labeled with the bidder's name and "Cost Proposal".

The cost proposal shall be comprised of the bidder's completed **Price Schedule** which is included as an attachment to the RFP.

Refer to the term, **Labor Rate (Fully Loaded Firm Fixed Price)** as defined: A price that is all-inclusive of direct costs and indirect costs, including, but not limited to, direct labor costs, overhead, fee or profit, clerical support, equipment, materials, supplies, managerial (administrative) support, all documents, reports, forms, travel, reproduction and any other costs. No additional fees or costs shall be paid by the Trust unless there is a change in the scope of work.

The bidder shall provide a budget using price lines provided on the Price Schedule for this proposal. Insert a specific Consultant staff category on each line. **The budget will be used to rank the cost of bid proposals.**

The Unit Price column shall reflect the bidder's proposed means of budgeting contract work. If awarded the contract, the Unit Price column shall be the method for providing cost estimates for the engagement.

For each task described in the "Scope of Services" section above, an estimate of hours needed to complete (budget hours) shall be included on each individual consultant staff category line with the appropriate hourly rate. The total price for each consultant staff category shall be calculated by multiplying the budget hours by the hourly rate. The summation of each line of the total price column will produce the total budget estimate for the project. **A firm, total not-to-exceed cost for the audit shall be provided.**

Each bidder must hold its price(s) firm through issuance of contract to permit the completion of the evaluation of bid proposals received throughout the contract award process.

**XI. Contract Terms**

**a. Period of Services**

**b. Standard Terms and Conditions**

The attached Standard Contract Terms and Conditions (Appendix **Exhibit X**) are in addition to the terms and conditions set forth in the Request for Proposal (RFP) and should be read

in conjunction with same unless the RFP specifically indicates otherwise. If a bidder proposes changes or modifications or takes exception to any of the Trust's terms and conditions, modification or exception in the Trust's terms and conditions by a bidder will be a factor in the determination of an award of a contractor purchase agreement.

All of the Trust's terms and conditions will become a part of any contract(s) or order(s) awarded as a result of the Request for Proposal, whether stated in part, in summary or by reference. In the event the bidder's terms and conditions conflict with the Trust's, the Trust's terms and conditions will prevail, unless the bidder is notified in writing of the Trust's acceptance of the bidder's terms and conditions.

## **XII. Other Information to Be Submitted By Bidder**

### **CONFLICT OF INTEREST DISCLOSURE**

Identify any material arrangements, relationships, associations, employment or other contacts that may cause a conflict of interest or the appearance of a conflict of interest if your firm acts as consultant to the Trust.

### **INITIAL REQUEST FOR DOCUMENTS**

The Consultant shall submit an initial information request for pertinent documents as a part of the proposal. Upon final selection of the Consultant by the Trust, the Trust shall initiate responses to the initial information request, thus enabling the Consultant to have access to the requested information during the early stages of the audit. The initial information request should be clearly prioritized and should not be overly burdensome.

### **WORK SPACE**

Requirements for working space at the Trust's headquarters should be specified in the proposal.

### **PERIOD OF OFFER**

A statement should be included stating that the Consultant's proposal shall remain valid for three months from the final date for submitting proposals as stated on the cover of this RFP.

**9.0 PRICE SCHEDULE** Date: \_\_\_\_\_

**INTERNAL CONTROLS AUDITING SERVICES: NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST**

Bidder's Name: \_\_\_\_\_

The bidder shall consider all pertinent contractor responsibilities as contained in Scope of Services section of the RFP when presenting the Price Schedule as part of the overall proposal. Please insert a specific Consultant staff category on each line.

Price Line	Consultant Staff Category - Labor Rate (Fully Loaded Firm Fixed Price)	Unit	Unit Price	Budget Hours	Total Price*
1		Hour			\$
2		Hour			\$
3		Hour			\$
4		Hour			\$
5		Hour			\$
6		Hour			\$
7		Hour			\$
8		Hour			\$
9		Hour			\$
10		Hour			\$
11		Hour			\$
12		Hour			\$
13		Hour			\$
14		Hour			\$
15		Hour			\$
16	Total Labor (lines 1 through 15) *				\$

\*Price used to rank bids.

**For the purpose of this RFP, the bidder must price its staff using the lines provided in the Price Schedule above.**

The bidder should submit a budget including Consultant staff categories (labor titles) and hourly rates for each Consultant staff category that supports and explains the firm fixed price submitted on its price schedule.





**RESOLUTION NO. 18 - 03**

**AMENDED AND RESTATED RESOLUTION  
AUTHORIZING THE CONSTRUCTION LOAN FINANCING PROGRAM  
FOR STATE FISCAL YEAR 2018**

**WHEREAS**, the New Jersey Environmental Infrastructure Trust (the "Trust"), pursuant to and in accordance with (i) the "New Jersey Environmental Infrastructure Trust Act", constituting Chapter 334 of the Pamphlet Laws of 1985 of the State (codified at N.J.S.A. 58:11B-1 *et seq.*), as the same has been, and in the future may from time to time be, amended and supplemented (the "Act"), and (ii) the regulations promulgated pursuant to the Act (N.J.A.C. 7:22-2.1 *et seq.*), as the same have been, and in the future may from time to time be, amended and supplemented (the "Regulations"), is authorized, pursuant to an interim financing program (the "Construction Financing Program"), to make loans (each, a "Construction Loan") to eligible project sponsors (each, a "Borrower") for the purpose of financing the allowable costs of environmental infrastructure projects (each, a "Project"), provided that each such Construction Loan made by the Trust satisfies the requirements of the Act, including, without limitation, N.J.S.A. 58:11B-9(d), and the Regulations, including, without limitation, N.J.A.C. 7:22-4.47; and

**WHEREAS**, pursuant to the provisions of N.J.A.C. 7:22-4.47, a proposed project sponsor is eligible to be a Borrower for a Construction Loan for purposes of financing the allowable costs of the Project of such Borrower pursuant to the Construction Financing Program, provided each of the following conditions is satisfied in full: (i) the Project is listed on the project priority lists for the ensuing fiscal year that have been submitted to the State Legislature pursuant to N.J.S.A. 58:11B-20 or N.J.S.A. 58:11B-20.1 (collectively, the "Priority List"); (ii) the proposed Borrower has submitted a complete application for the Project in accordance with N.J.A.C. 7:22-4.11; (iii) the Project (or, at a minimum, an operable segment thereof) has been certified for funding by the Trust in accordance with N.J.A.C. 7:22-4.13; (iv) the Project is in the fundable range in the forthcoming funding cycle given the Project's rank and the anticipated availability of New Jersey Department of Environmental Protection ("NJDEP") and Trust monies; and (v) the proposed Borrower has not previously received a Construction Loan through the Construction Financing Program for the same project scope (exclusive of a Loan made solely for the purpose of extending the term of a prior Construction Loan) (collectively, the "Construction Financing Program Conditions Precedent"); and

**WHEREAS**, on February 15, 2017, the Board of Directors of the Trust duly adopted Resolution No. 17-11 "Resolution Authorizing the Construction Loan Financing Program For State Fiscal Year 2018" (the "Original Authorizing Resolution"); and

**WHEREAS**, it is the desire of the Trust to amended and restate in its entirety the Original Authorizing Resolution for the purpose of modifying certain of the terms and provisions thereof in furtherance of the administration, pursuant to the Act, the Regulations and this Resolution, of the Construction Financing Program for the State Fiscal Year 2018 ("SFY2018") Environmental Infrastructure Financing Program of the Trust (the "SFY2018 Construction Financing Program"); and

**WHEREAS**, in order to provide a source of funding for the implementation of the Construction Financing Program for SFY2018, the New Jersey State Legislature and the Governor of the State have enacted into law an appropriation act (the "Appropriation") that has appropriated to the Trust, from repayments of loans deposited in any account, including, without limitation, the Clean Water State Revolving Fund Accounts contained within the "Wastewater Treatment Fund", the "1992 Wastewater Treatment Fund", the "Water Supply Fund", the "Stormwater Management and Combined Sewer Overflow Abatement Fund", or the Drinking Water State Revolving Fund, as appropriate, and from any net earnings received from the investment and reinvestment of such deposits, the sum of \$500,000,000, such sum to be deposited in the segregated fund created by the Trust for the purpose of funding the SFY2018 Construction Financing Program; and

**WHEREAS**, in addition to the funds made available to the Trust pursuant to the Appropriation for purposes of the SFY2018 Construction Financing Program, it is the desire of the Trust to provide, as additional sources of funding for the SFY2018 Construction Financing Program, (i) net earnings with respect to funds held by the Trust and (ii) operating funds of the Trust that are not required for, or committed to, the operations of the Trust for State Fiscal Years 2018 and 2019 (collectively, the "Available Trust Revenues"), which Available Trust Revenues may be made available by the Trust, up to a maximum of \$500,000 per Borrower, to (i) Borrowers participating in the SFY2018 Construction Financing Program that do not qualify for funding from the Appropriation, as well as (ii) at the election of the Trust, any other Borrowers participating in the SFY2018 Construction Financing Program; and

**WHEREAS**, with respect to the SFY2018 Construction Financing Program of the Trust and other future construction financing programs of the Trust (collectively, the "Current and Future Construction Financing Programs"), it is the desire of the Trust to explore, as an additional source of funding for the Current and Future Construction Financing Programs, the procurement by the Trust of a line of credit or other similar financial instrument, either through a competitive or negotiated process, from a commercial bank (the "Credit Instrument"; the Appropriation, the Available Trust Revenues and the Credit Instrument shall be referred to collectively herein as the "Available Funds"), and in furtherance of such exploration, the Trust, through its Authorized Officers (as hereinafter defined), desires to (i) discuss and explore potential structural, collateral and credit features relating to a Credit Instrument with one or more banking corporations, having membership in the federal depository insurance corporation, and/or (ii) prepare and distribute a Request for Qualifications or a Request for Proposals, seeking proposals from qualified providers of a Credit Instrument; and

**WHEREAS**, it is the desire of the Trust that, if a Borrower is eligible to receive financing from the SFY2018 Construction Financing Program for a Project that includes multiple operable segments, the Borrower may receive a single, combined Construction Loan for such Project, provided that (i) the Borrower has submitted to the Trust and the NJDEP a complete application with respect to the Project, including each operable segment of such Project, (ii) the Trust shall not be obligated to disburse Available Funds pursuant to such Construction Loan with respect to any operable segment of a given Project until such operable segment and the Project costs applicable thereto shall have been certified by the NJDEP, and (iii) the Borrower otherwise satisfies each of the other applicable

requirements the Act and the Regulations applicable thereto and the applicable terms of this Resolution.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of the New Jersey Environmental Infrastructure Trust (the "Board"), as follows:

**Section 1.** The Original Authorizing Resolution, relating to the SFY2018 Construction Financing Program, is hereby amended and restated in its entirety.

**Section 2.** The Board hereby authorizes the establishment of the SFY2018 Construction Financing Program, provided (i) each Construction Loan made pursuant to the SFY2018 Construction Financing Program shall be funded solely from the Available Funds applicable thereto and available therefor; and (ii) each Construction Loan made pursuant to the SFY2018 Construction Financing Program, and each Project (including each operable segment thereof) funded thereby, shall comply fully with the provisions of the Act and the Regulations applicable thereto and the applicable terms of this Resolution. The Authorized Officers are each hereby severally authorized and directed, after consultation with the Professional Advisors (as hereinafter defined), to determine the particular Available Funds that shall be allocated to, and shall be the source of funding for, any given Construction Loan made pursuant to the SFY2018 Construction Financing Program.

**Section 3.** Any Construction Loan made by the Trust as part of the SFY2018 Construction Financing Program shall be evidenced by (i) a note or other appropriate obligation of the Borrower to be issued to the Trust (the "Obligation"), and (ii) any other documentation as shall be deemed necessary and appropriate by the Chairman of the Trust, the Vice Chairman of the Trust and the Executive Director of the Trust, or any other person or persons designated by the Board by resolution to act on behalf of the Trust, but in each case subject to the limitations of the by-laws of the Trust (each, an "Authorized Officer"), after consultation with Bond Counsel to the Trust and the Office of the Attorney General of the State (collectively, the "Loan Instruments"). Each Obligation shall be in substantially the applicable form attached hereto as Exhibit A, with such revisions and modifications thereto as shall be approved by an Authorized Officer after consultation with Bond Counsel to the Trust and the Office of the Attorney General of the State. The Loan Instruments shall include such terms and provisions relating to the SFY2018 Construction Financing Program as shall be determined by an Authorized Officer, after consultation with Bond Counsel to the Trust and the Office of the Attorney General of the State, as being necessary in connection with (i) the satisfaction of the requirements of the Act and the Regulations applicable thereto and (ii) the implementation of the applicable terms of this Resolution, including, with respect to, as applicable, the funding of a Project with multiple operable segments via a single Construction Loan and the proper disbursement from such Construction Loan for the funding of each Project operable segment.

Any Construction Loan made by the Trust to a Borrower as part of the SFY2018 Construction Financing Program:

(a) shall bear interest at a rate that shall be determined in accordance with the Interest Rate Calculation (as defined in Section 4 hereof);

(b) shall have a maturity date that shall be determined by an Authorized Officer, in consultation with Bond Counsel to the Trust and the Office of the Attorney General of the State, which maturity date shall be no later than the applicable date set forth in Section 5 hereof; and

(c) shall be subject to the imposition of a fee consisting of fifty percent (50%) of the NJDEP loan origination fee applicable to a given Project.

**Section 4.** The rate of interest to be paid by a Borrower to the Trust with respect to the repayment of a Construction Loan shall be calculated in the following manner (the “Interest Rate Calculation”), so as to achieve an objectively determined rate of interest that is reflective of (i) the policy goals of the Trust as set forth in this Resolution and (ii) the market as of the respective dates on which the Construction Loan is disbursed by the Trust to the Borrower, provided, however, that the portion of the Construction Loan that shall finance the NJDEP loan origination fee that shall be payable as provided in Section 3(c) hereof may be determined by the Authorized Office, at his or her discretion, to bear interest at a rate of 0.00% as an alternative to the rate of interest that otherwise would be applicable to that portion of the Construction Loan pursuant to the provisions of this Section 4:

- (a) with respect to any portion of a Construction Loan made from amounts made available to the Trust pursuant to the Appropriation, 0.00%;
- (b) with respect to any portion of a Construction Loan utilizing from Available Trust Revenues to a local government unit (as such term is defined in the Act), the interest rate as defined by an appropriate general obligation tax-exempt market index, as shall be selected by an Authorized Officer, which options for selection may include, without limitation, (i) the Thompson Financial TM3 “AAA” Municipal Market Data General Obligation Index (Tax Exempt) and (ii) the “BVAL” Index (relating to general obligation, tax exempt credits) of Bloomberg L.P. (or any subsidiary thereof), in any case for the number of years that corresponds to the term consisting of the period from the date of a given disbursement of proceeds of the Construction Loan to the maturity date of the Construction Loan, rounded up to the nearest year;
- (c) with respect to any portion of a Construction Loan utilizing from Available Trust Revenues to a public water utility (as such term is defined in the Act), a small water company (as such term is defined in the Act), any other private person, or a local government unit on behalf of any private person, the interest rate as defined by an appropriate alternative minimum tax market index, as shall be selected by an Authorized Officer, which options for selection may include, without limitation, (i) the Thompson Financial TM3 “AAA” Municipal Market Data General Obligation Index (AMT) and (ii) the “BVAL” Index (relating to alternative minimum tax credits) of Bloomberg L.P. (or any subsidiary thereof), in any case for the number of years that corresponds to the term consisting of the period from the date of a given

disbursement of proceeds of the Construction Loan to the maturity date of the Construction Loan, rounded up to the nearest year; and

- (d) with respect to any portion of a Construction Loan utilizing funds made available to the Trust pursuant to a Credit Instrument, a rate to be determined by the Trust pursuant to the approval by the Board of any such Credit Instrument as required by Section 13 hereof, which rate shall be commensurate with the cost to the Trust of obtaining funds pursuant to such Credit Instrument for the purpose of making such Construction Loan or portion thereof.

For purposes of determining the term in order to perform the Interest Rate Calculation with respect to a given disbursement of Construction Loan proceeds in connection with a given Construction Loan, as set forth above, the Authorized Officers shall calculate such term as commencing on the date of a given disbursement and continuing to, but not including, the maturity date of such Construction Loan, rounding up to the nearest year.

**Section 5.** The maturity date with respect to any Construction Loan, including any individual funding disbursement made pursuant thereto, shall not exceed the maximum maturity that is permitted pursuant to the provisions of N.J.S.A. 58:11B-9(d), as such provisions may hereafter be amended and supplemented from time to time.

**Section 6.** The principal amount of each Construction Loan shall not exceed \$10,000,000, unless a higher principal amount thereof is authorized by official action of the Board at a future meeting thereof.

**Section 7.** The Authorized Officers are each hereby severally authorized and directed, after consultation with Bond Counsel to the Trust and the Office of the Attorney General of the State, to approve the participation of a Borrower in the SFY2018 Construction Financing Program, provided that such Borrower qualifies for such participation pursuant to the provisions of the Act and the Regulations applicable thereto and the applicable terms of this Resolution, including, without limitation, satisfaction by such Borrower with the applicable Financing Program Conditions Precedent.

**Section 8.** Prior to the making of any Construction Loan with respect to any Project pursuant to the SFY2018 Construction Financing Program, an Authorized Officer shall certify such Project for funding through the SFY2018 Construction Financing Program in accordance with the provisions of N.J.A.C. 7:22-4.13; provided, however, that (i) the proposed Project, or at least one operable segment thereof (as provided pursuant to the provisions of Section 9 hereof), previously has been certified for funding by the Commissioner of the NJDEP, and (ii) such proposed Project (including each of the operable segments thereof) shall otherwise qualify for funding through the SFY2018 Construction Financing Program pursuant to the terms and provisions of the Act and the Regulations applicable thereto and the applicable terms and provisions of this Resolution.

**Section 9.** In the event that a portion, but not all, of a Project that is to be the subject of a Construction Loan has been certified for funding by the Commissioner of the NJDEP, as well as by the Trust pursuant to the provisions of Section 8 hereof, the Authorized Officers are hereby severally authorized to extend a Construction Loan to such Borrower for such Project in a stated principal amount that may equal, but shall not exceed, the total estimated allowable costs of such Project (subject to the further limitations set forth in the Act, the applicable Regulations and this Resolution, including, without limitation, Section 6 of this Resolution); provided, however, that the Loan Instruments relating to such Construction Loan shall provide that the Trust shall not disburse to the Borrower any proceeds of such Construction Loan with respect to those costs of the Project that have not been certified by the Commissioner of the NJDEP, and such prohibition upon the disbursement by the Trust to the Borrower of such proceeds of the Construction Loan shall continue to apply until such date as such Project costs have been certified by the Commissioner of the NJDEP, as well as by the Trust pursuant to the provisions of Section 8 hereof.

**Section 10.** Each Authorized Officer is hereby severally authorized and directed to execute (i) any Loan Instrument to which the Trust is a party (the "Trust Loan Instruments") and (ii) any certificates, instruments or documents contemplated therein or otherwise related to the participation of any Borrower in the SFY2018 Construction Financing Program.

**Section 11.** Upon execution of the Trust Loan Instruments by an Authorized Officer, the Secretary and the Assistant Secretary of the Trust are each hereby severally authorized and directed, where required, to affix the corporate seal of the Trust, and to attest to the signature of such Authorized Officer, thereon and on any certificates, instruments or documents contemplated therein or related thereto.

**Section 12.** At the meeting of the Board that is scheduled to occur during the month next succeeding the month during which execution and delivery is completed with respect to Loan Instruments relating to a Construction Loan made by the Trust to a Borrower pursuant to the SFY2018 Construction Financing Program, the Executive Director of the Trust shall provide a report to the Board concerning the details of such transaction.

**Section 13.** Each Authorized Officer is hereby severally authorized to undertake and complete the following with respect to the anticipated procurement of a Credit Instrument:

- (a) engage in discussions with one or more banking corporations, having membership in the federal depository insurance corporation, for the purpose of exploring potential structural, collateral and credit features relating to a Credit Instrument in favor of the Trust for the purpose of funding all or a portion of one or more of the Current and Future Construction Financing Programs, and include in such discussions, at the discretion of such Authorized Officer, one or more of Bond Counsel to the Trust, the Office of the Attorney General of the State, and the Financial Advisor to the Trust (collectively, the "Professional Advisors"); and/or

- (b) prepare and distribute, in consultation with the Professional Advisors, a Request for Qualifications or a Request for Proposals (in either case, the “RFP”) to banking corporations, having membership in the federal depository insurance corporation, for the establishment of a Credit Instrument in favor of the Trust for the purpose of funding all or a portion of one or more of the Current and Future Construction Financing Programs, in such amount as shall be determined by such Authorized Officer to be necessary and appropriate for such purpose. Such RFP shall be prepared and distributed pursuant to and in compliance with Trust Policy and Procedure No. 4.00, entitled “Procurement of Goods and Services”.

Notwithstanding the above terms and provisions of this Section 13:

- (c) the specific structural, collateral and credit features of the Credit Instrument that may be discussed by an Authorized Officer with one or more banking corporations, and any contractual commitment by the Trust with respect to such structural, collateral and credit features, shall be subject to the authorization and approval thereof by the Board at a future meeting thereof; and
- (d) the award of any contract to a banking corporation that has submitted to the Trust a response to RFP for the provision of a Credit Instrument for the purpose of funding all or a portion of one or more of the Current and Future Construction Financing Programs shall be made only upon authorization by official action of the Board at a future meeting thereof.

**Section 14.** Any Authorized Officer is hereby authorized and directed to take such other actions that such Authorized Officer, in his respective sole discretion after consultation with Bond Counsel to the Trust and the Office of the Attorney General of the State, deems necessary, convenient or desirable to affect the transactions contemplated hereby.

Adopted Date: January 11, 2018

Motion Made By: Roger Ellis

Motion Seconded By: Michele Putnam

Ayes: 4

Nays: 0

Abstentions: 0

**EXHIBIT A**

**FORMS OF OBLIGATION**



[NAME OF MUNICIPALITY]  
NOTE  
RELATING TO:  
THE CONSTRUCTION FINANCING TRUST LOAN PROGRAM  
OF THE NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST

\$ \_\_\_\_\_, 201\_

\_FP-18-\_\_

**FOR VALUE RECEIVED,** \_\_\_\_\_, a municipal corporation duly created and validly existing pursuant to the laws of the State (as hereinafter defined), and its successors and assigns (the "Borrower"), hereby promises to pay to the order of the **NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST**, a public body corporate and politic with corporate succession, duly created and validly existing under and by virtue of the Act (as hereinafter defined) (the "Trust"), the Principal (as hereinafter defined), together with all unpaid accrued Interest (as hereinafter defined), fees, late charges and other sums due hereunder, if any, in lawful money of the United States of America, on the Maturity Date (as hereinafter defined) or the date of any optional prepayment or acceleration in accordance with the provisions of this note (this "Note").

**SECTION 1. Definitions.** As used in this Note, unless the context requires otherwise, the following terms shall have the following meanings:

**"Act"** means the "New Jersey Environmental Infrastructure Trust Act", constituting Chapter 334 of the Pamphlet Laws of 1985 of the State (codified at N.J.S.A. 58:11B-1 *et seq.*), as the same may from time to time be amended and supplemented.

**"Administrative Fee"** means a fee of up to four-tenths of one percent (.40%) of that portion of the Principal identified in clause (i) of the definition thereof (as set forth in this Section 1), or such lesser amount, if any, as the Trust may determine from time to time.

**"Anticipated Financing Program"** means the financing program of the Trust, pursuant to which the Trust will issue its Trust Bonds for the purpose of financing, on a long term basis, the Project and other projects of certain qualifying borrowers.

**"Anticipated Long Term Loan"** means the long term loan made by the Trust to the Borrower from the proceeds of its Trust Bonds, as part of the Anticipated Financing Program.

**"Authorized Officer"** means any person authorized by the Borrower or the Trust, as the case may be, to perform any act or execute any document relating to the Loan or this Note.

**"Code"** means the Internal Revenue Code of 1986, as the same may from time to time be amended and supplemented, including any regulations promulgated thereunder, any successor code thereto and any administrative or judicial interpretations thereof.

**“Cost”** means those costs that are allocable to the Project, as shall be determined on a project-specific basis in accordance with the Regulations, as further set forth in Exhibit B hereto, (i) as such Exhibit B shall be supplemented by an Authorized Officer of the Trust by means of either a substitute Exhibit B or an additional Exhibit B, such supplement to be implemented concurrently with the supplement to Exhibit A-1 hereto (as provided in the definition of “Project” as set forth herein), and (ii) as the then-current Exhibit B may be amended by subsequent changes to eligible costs as evidenced by a certificate of an Authorized Officer of the Trust.

**“Environmental Infrastructure Facilities”** means Wastewater Treatment Facilities, Stormwater Management Facilities or Water Supply Facilities (as such terms are defined in the Regulations).

**“Environmental Infrastructure System”** means the Environmental Infrastructure Facilities of the Borrower, including the Project, for which the Borrower is receiving the Loan.

**“Event of Default”** means any occurrence or event specified in Section 6 hereof.

**“Fund Portion”** means, on any date, an amount equal to seventy-five percent (75%) of the Principal of the Loan on such date, exclusive of that portion of the Principal of the Loan that is allocable to the NJDEP Loan Origination Fee, which NJDEP Loan Origination Fee shall be financed exclusively from the Trust Portion.

**“Interest”** means the interest charged on the outstanding Principal of the Loan at a rate of (a) with respect to the Trust Portion of the Principal, the applicable Trust Portion Interest Rate and (b) with respect to the Fund Portion of the Principal, 0.00%, and payable by the Borrower to the Trust (i) on the Maturity Date or (ii) with respect to any optional prepayment or acceleration of the Loan pursuant to the terms of this Note, on the date of such optional prepayment or acceleration, as the case may be.

**“Loan”** means the loan of the Principal, made by the Trust to the Borrower to finance or refinance a portion of the Cost of the Project, as evidenced by this Note.

**“Loan Disbursement Requisition”** means the requisition, to be executed by an Authorized Officer of the Borrower and approved by the NJDEP, in a form to be determined by the Trust and the NJDEP.

**“Maturity Date”** means June 30, 2021, or (i) such earlier date as shall be determined by an Authorized Officer of the Trust in his or her sole discretion, which date shall be determined by such Authorized Officer of the Trust to be the date of the closing for the Anticipated Financing Program, or (ii) such later date (subject to the then-applicable limits of the Act) to be determined by an Authorized Officer of the Trust in his or her sole discretion, pursuant to a written certification thereof, as acknowledged and approved by an Authorized Officer of the Borrower.

**“NJDEP”** means the New Jersey Department of Environmental Protection.

**“NJDEP Loan Origination Fee”** means the “NJDEP Fee” as referenced and defined in Exhibit B hereto, which NJDEP Fee is an administrative fee that is payable by the Borrower to the NJDEP as a portion of the Cost of the Project that has been incurred by the Borrower for engineering and environmental services provided to the Borrower by the NJDEP.

**“Principal”** means the principal amount of the Loan, at any time being the lesser of (i) \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), or (ii) the aggregate outstanding amount as shall actually be disbursed to the Borrower by the Trust pursuant to one or more Loan Disbursement Requisitions, which Principal shall be payable by the Borrower to the Trust (i) on the Maturity Date or (ii) with respect to any optional prepayment or acceleration of the Loan pursuant to the terms of this Note, on the date of such optional prepayment or acceleration, as the case may be.

**“Project”** means the Environmental Infrastructure Facilities of the Borrower which constitutes a project for which the Trust is making the Loan to the Borrower, as further described in Exhibit A-1 hereto; provided, however, that the description of the Project, as set forth in Exhibit A-1 attached hereto, shall be supplemented by means of either (i) the substitution of a revised and updated Exhibit A-1 for the current Exhibit A-1 or (ii) the inclusion of an additional Exhibit A-1, in either case, promptly following the certification for funding by the NJDEP of the remaining components of the Project, as applicable, such supplement to be undertaken by an Authorized Officer of the Trust.

**“Regulations”** means the rules and regulations, as applicable, now or hereafter promulgated pursuant to N.J.A.C. 7:22-3 *et seq.*, 7:22-4 *et seq.*, 7:22-5 *et seq.*, 7:22-6 *et seq.*, 7:22-7 *et seq.*, 7:22-8 *et seq.*, 7:22-9 *et seq.* and 7:22-10 *et seq.*, as the same may from time to time be amended and supplemented.

**“State”** means the State of New Jersey.

**“Trust Bonds”** means the revenue bonds of the Trust to be issued, as part of the Anticipated Financing Program.

**“Trust Portion”** means, on any date, an amount equal to the aggregate of (i) twenty-five percent (25%) of the Principal of the Loan on such date, exclusive of that portion of the Principal of the Loan that is allocable to the NJDEP Loan Origination Fee, plus (ii) one hundred percent (100%) of that portion of the Principal of the Loan that is allocable to the NJDEP Loan Origination Fee.

**“Trust Portion Interest Rate”** means, with respect to each disbursement of proceeds of the Trust Portion of the Loan, (a) to the extent that such disbursement is funded from moneys appropriated to the Trust, for the Construction Financing Trust Loan Program of the Trust, pursuant to an appropriations act of the State, the Trust Portion Interest Rate shall equal 0.00%, (b) to the extent that such disbursement is funded from available moneys of the Trust that are neither (i) appropriated to the Trust as provided by the preceding clause (a), nor (ii) borrowed from a financial institution pursuant to a line of credit or other similar financial instrument as

provided by the succeeding clause (c), the Trust Portion Interest Rate shall equal the interest rate that is published as either the Thompson Financial TM3 “AAA” Municipal Market Data General Obligation Index (Tax-Exempt) or the “BVAL” Index (relating to general obligation, tax exempt credits) of Bloomberg L.P. (or any subsidiary thereof), (with the particular index that is used by the Trust to be selected by an Authorized Officer of the Trust) or, if such indexes are no longer published on such date, such successor index as may be selected by an Authorized Officer of the Trust, in each case for the number of years that corresponds to the length of time from the date such disbursement is made available to the Borrower by the Trust to the Maturity Date, rounding up to the nearest year, or (c) to the extent that such disbursement is funded from available moneys of the Trust borrowed from a financial institution pursuant to a line of credit or other similar financial instrument, the Trust Portion Interest Rate shall equal the actual rate of interest established by the applicable financial institution pursuant to a competitive or negotiated solicitation by the Trust with respect to such line of credit or other financial instrument.

**SECTION 2. Representations of the Borrower.** The Borrower represents and warrants to the Trust:

(a) Organization. The Borrower: (i) is a municipal corporation duly created and validly existing under and pursuant to the Constitution and laws of the State; (ii) has full legal right and authority to execute, attest and deliver this Note, to sell this Note to the Trust, and to perform its obligations hereunder, and (iii) has duly authorized, approved and consented to all necessary action to be taken by the Borrower for: (A) the issuance of this Note, the sale thereof to the Trust and the due performance of its obligations hereunder and (B) the execution, delivery and due performance of all certificates and other instruments that may be required to be executed, delivered and performed by the Borrower in order to carry out and give effect to this Note.

(b) Authority. This Note has been duly authorized by the Borrower and duly executed, attested and delivered by Authorized Officers of the Borrower. This Note has been duly sold by the Borrower to the Trust and duly issued by the Borrower and constitutes a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms, except as the enforcement thereof may be affected by bankruptcy, insolvency or other laws or the application by a court of legal or equitable principles affecting creditors’ rights.

(c) Pending Litigation. There are no proceedings pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower that, if adversely determined, would adversely affect (i) the condition (financial or otherwise) of the Borrower, (ii) the ability of the Borrower to satisfy all of its Loan repayment obligations hereunder, (iii) the authorization, execution, attestation or delivery of this Note, (iv) the issuance of this Note and the sale thereof to the Trust, and (v) the Borrower’s ability otherwise to observe and perform its duties, covenants, obligations and agreements under this Note.

(d) Compliance with Existing Laws and Agreements; Governmental Consent. (i) The due authorization, execution, attestation and delivery of this Note by the Borrower and the sale of this Note to the Trust, (ii) the observation and performance by the Borrower of its duties, covenants, obligations and agreements hereunder, including, without limitation, the repayment of

the Loan and all other amounts due hereunder, and (iii) the undertaking and completion of the Project, will not (A) other than the lien, charge or encumbrance created by this Note and by any other outstanding debt obligations of the Borrower that are at parity with this Note as to lien on, and source and security for payment thereon from, the general tax revenues of the Borrower, result in the creation or imposition of any lien, charge or encumbrance upon any properties or assets of the Borrower pursuant to, (B) result in any breach of any of the terms, conditions or provisions of, or (C) constitute a default under, any existing ordinance or resolution, outstanding debt or lease obligation, trust agreement, indenture, mortgage, deed of trust, loan agreement or other instrument to which the Borrower is a party or by which the Borrower, its Environmental Infrastructure System or any of its properties or assets may be bound, nor will such action result in any violation of the provisions of the charter or other document pursuant to which the Borrower was established or any laws, ordinances, injunctions, judgments, decrees, rules, regulations or existing orders of any court or governmental or administrative agency, authority or person to which the Borrower, its Environmental Infrastructure System or its properties or operations are subject. The Borrower has obtained all permits and approvals required to date by any governmental body or officer for the authorization, execution, attestation and delivery of this Note, for the sale of this Note to the Trust, for the making, observance and performance by the Borrower of its duties, covenants, obligations and agreements under this Note, and for the undertaking and completion of the Project.

(e) Reliance. The Borrower hereby acknowledges that the Trust is making the Loan to the Borrower pursuant to the terms hereof in reliance upon each of the representations of the Borrower set forth in this Section 2.

### **SECTION 3. Covenants of the Borrower.**

(a) Participation in the Anticipated Financing Program. The Borrower covenants and agrees that it shall undertake and complete in a timely manner all conditions precedent identified by the Trust relating to (i) the participation by the Borrower in the Anticipated Financing Program and (ii) the qualification by the Borrower for receipt of the Anticipated Long Term Loan.

(b) Full Faith and Credit Pledge. To secure the repayment obligation of the Borrower with respect to this Note, and all other amounts due under this Note, the Borrower unconditionally and irrevocably pledges its full faith and credit and covenants to exercise its unlimited taxing powers for the punctual payment of any and all obligations and amounts due under this Note. The Borrower acknowledges that, to assure the continued operation and solvency of the Trust, the Trust may, pursuant to and in accordance with Section 12a of the Act, require that if the Borrower fails or is unable to pay promptly to the Trust in full any Loan repayments, any Interest or any other amounts due pursuant to this Note, an amount sufficient to satisfy such deficiency shall be paid by the State Treasurer to the Trust from State-aid otherwise payable to the Borrower.

(c) Disposition of Environmental Infrastructure System. The Borrower covenants and agrees that it shall not sell, lease, abandon or otherwise dispose of all or substantially all of

its Environmental Infrastructure System without the express written consent of the Trust, which consent may or may not be granted by the Trust in its sole discretion.

(d) Financing With Tax-Exempt Bonds. The Borrower acknowledges, covenants and agrees that it is the intention of the Borrower to finance the Project on a long term basis with proceeds of Trust Bonds now or hereinafter issued, the interest on which is excluded from gross income for purposes of federal income taxation pursuant to Section 103(a) of the Code (“tax-exempt bonds”). In furtherance of such long term financing with tax-exempt bonds, the Borrower covenants that, except to the extent expressly permitted in writing by the Trust, the Borrower will not take any action or permit any action to be taken which would result in any of the proceeds of the Loan being used (directly or indirectly) (i) in any “private business use” within the meaning of Section 141(b)(6) of the Code, (ii) to make or finance loans to persons other than the Borrower, or (iii) to acquire any “nongovernmental output property” within the meaning of Section 141(d)(2) of the Code. In addition, the Borrower covenants and agrees that no portion of the Project will be investment property, within the meaning of Section 148(b) of the Code. The Borrower covenants and agrees that any Costs of the Borrower’s Project to be paid or reimbursed with proceeds of the Loan will result in the expenditure of proceeds under Treasury Regulations §1.148-6(d) and Treasury Regulations §1.150-2.

(e) Operation and Maintenance of Environmental Infrastructure System. The Borrower covenants and agrees that it shall maintain its Environmental Infrastructure System in good repair, working order and operating condition, and make all necessary and proper repairs and improvements with respect thereto.

(f) Records and Accounts; Inspections. The Borrower covenants and agrees that it shall keep accurate records and accounts for its Environmental Infrastructure System (the “System Records”), separate and distinct from its other records and accounts (the “General Records”), which shall be audited annually by an independent registered municipal accountant and shall be made available for inspection by the Trust upon prior written notice. The Borrower shall permit the Trust to inspect the Environmental Infrastructure System.

(g) Insurance. The Borrower covenants and agrees that it shall maintain insurance policies providing against risk of direct physical loss, damage or destruction of its Environmental Infrastructure System, in an amount that will satisfy all applicable regulatory requirements. The Borrower covenants and agrees that it shall include, or cause to be included, the Trust as an additional “named insured” on any certificate of liability insurance procured by the Borrower and by any contractor or subcontractor for the Project.

(h) Reliance. The Borrower hereby acknowledges that the Trust is making the Loan to the Borrower pursuant to the terms hereof in reliance upon each of the covenants of the Borrower set forth in this Section 3.

**SECTION 4. Disbursement of the Loan Proceeds; Amounts Payable; Prepayment; and Late Fee.** The Trust shall effectuate the Loan to the Borrower by making one or more disbursements to the Borrower promptly after receipt by the Trust of a Loan Disbursement Requisition, and the approval of such Loan Disbursement Requisition by an Authorized Officer

of the Trust or designee thereof, each such disbursement and the date thereof to be recorded by an Authorized Officer of the Trust on the table attached as Exhibit A-2 hereto; provided, however, that no Loan Disbursement Requisition shall be approved by the Trust for disbursement unless and until the portion of the Project to which such Loan Disbursement Requisition relates has been certified for funding by the NJDEP. It is expected that the proceeds of the Loan will be disbursed to the Borrower in accordance with Exhibit C hereto, as Exhibit C shall be supplemented by an Authorized Officer of the Trust by means of either a substitute Exhibit C or an additional Exhibit C, such supplement to be implemented concurrently with the supplement to Exhibit A-1 hereto (as provided in the definition of "Project" as set forth herein). The latest date upon which the Borrower may submit to the Trust a Loan Disbursement Requisition is the business day immediately preceding the date fixed by the Trust for the sale of its bonds in connection with the Anticipated Financing Program, or such alternative date as shall be identified by the Trust for the Borrower in writing. On the Maturity Date, the Borrower shall repay the Loan to the Trust in an amount equal to: (i) the Principal; (ii) the Interest; (iii) the Administrative Fee, if any; and (iv) any other amounts due and owing pursuant to the provisions of this Note. The Borrower may prepay the Loan obligations hereunder, in whole or in part, upon receipt of the prior written consent of an Authorized Officer of the Trust. Each payment made to the Trust shall be applied to the payment of, first, the Interest then due and payable, second, the Principal, third, the Administrative Fee, if any, fourth, any late charges, and, finally, any other amount due pursuant to the provisions of this Note. In the event that the repayment obligation set forth in this Note is received by the Trust later than the Maturity Date, a late fee shall be payable to the Trust in an amount equal to the greater of twelve percent (12%) per annum or the prime rate as published in the Wall Street Journal on the Maturity Date plus one half of one percent per annum on such late payment from the Maturity Date to the date it is actually paid; provided, however, that any late payment charges incurred hereunder shall not exceed the maximum interest rate permitted by law. Notwithstanding the provisions of this Section 4 to the contrary, the Borrower hereby acknowledges and agrees that, on the date of issuance of this Note, a disbursement shall be made and shall be recorded by an Authorized Officer of the Trust on the table attached as Exhibit A-2 hereto in the amount recorded thereon. Such disbursement shall be made for the purpose of funding fifty percent (50%) of the NJDEP Loan Origination Fee. Such disbursement shall be paid by the Trust on behalf of the Borrower directly to the NJDEP in satisfaction of the provisions hereof.

Notwithstanding the provisions of this Note to the contrary with respect to the funding, pursuant to this Section 4, of any Loan Disbursement Requisition relating to all or any portion of the Project: (i) the Borrower hereby acknowledges and agrees that the Trust shall not, and shall not be required to, commit funds, pursuant to the Construction Financing Trust Loan Program of the Trust, to any portion of the Project until such time as the particular portion of the Project in question has been certified for funding by the NJDEP; (ii) no Loan Disbursement Requisition shall be approved by the Trust for disbursement pursuant to this Section 4 unless and until the portion of the Project to which such Loan Disbursement Requisition relates has been certified for funding by the NJDEP; and (iii) the Trust has no obligation pursuant to this Note to make all or any portion of any disbursement pursuant to the provisions of this Section 4 if the Borrower lacks the authority to pay interest on this Note in an amount equal to the Trust Portion Interest Rate.

**SECTION 5. Unconditional Obligations.** The direct, general obligation of the Borrower to make the Loan repayments and all other payments required hereunder and the obligation to perform and observe the other duties, covenants, obligations and agreements on its part contained herein shall be absolute and unconditional, and shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner whatsoever while any Loan repayments, or any other payments due hereunder, remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project or Environmental Infrastructure System, commercial frustration of the purpose, any change in the laws of the United States of America or of the State or any political subdivision of either or in the rules or regulations of any governmental authority, any failure of the Trust to perform and observe any agreement or any duty, liability or obligation arising out of this Note, or any rights of set-off, recoupment, abatement or counterclaim that the Borrower might have against the Trust or any other party; provided, however, that payments hereunder shall not constitute a waiver of any such rights.

**SECTION 6. Events of Default.** The following events shall constitute an “Event of Default” hereunder: (i) failure by the Borrower to pay, when due, any and all of its Loan repayment obligations hereunder, and any other payment obligations due hereunder; (ii) failure by the Borrower to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed pursuant to the terms of this Note; (iii) any representation made by the Borrower contained in this Note or in any instrument furnished in compliance with or with reference to this Note is false or misleading in any material respect; and (iv) a petition is filed by or against the Borrower under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Note or thereafter enacted, unless in the case of any such petition filed against the Borrower such petition shall be dismissed within thirty (30) days after such filing and such dismissal shall be final and not subject to appeal, or the Borrower shall become insolvent or bankrupt or shall make an assignment for the benefit of its creditors, or a custodian of the Borrower or any of its property shall be appointed by court order or take possession of the Borrower or its property or assets if such order remains in effect or such possession continues for more than thirty (30) days.

**SECTION 7. Remedies upon Event of Default.** Whenever an Event of Default shall have occurred and be continuing pursuant to the terms hereof, the Borrower hereby acknowledges and agrees to the rights of the Trust to take any action permitted or required at law or in equity to collect the amounts then due and thereafter to become due hereunder or to enforce the observance and performance of any duty, covenant, obligation or agreement of the Borrower hereunder. If an Event of Default shall have occurred, the Borrower hereby acknowledges and agrees that the Trust shall have the right to declare all Loan repayments and all other amounts due hereunder to be due and payable immediately without further notice or demand. The Borrower hereby acknowledges and agrees that no remedy herein is intended to be exclusive, and every remedy shall be cumulative and in addition to every other remedy given under this Note or now or hereafter existing at law or in equity. The Borrower hereby further acknowledges and agrees that no delay or omission by the Trust to exercise any remedy or right accruing upon any Event of Default shall impair any such remedy or right or shall be construed



to be a waiver thereof, but any such remedy or right may be exercised as often as may be deemed expedient. The Borrower hereby agrees that upon demand it shall pay to the Trust the reasonable fees and expenses of attorneys and other reasonable expenses (including, without limitation, the reasonably allocated costs of in-house counsel and legal staff) incurred in the collection of Loan repayments or any sum due hereunder or in the enforcement of the observation or performance of any obligations or agreements of the Borrower upon an Event of Default. Any moneys collected by the Trust pursuant to this Section 7 shall be applied first to pay any attorneys' fees or other fees and expenses owed by the Borrower.

**SECTION 8. Certain Miscellaneous Provisions.** The Borrower hereby acknowledges and agrees as follows: (a) all notices hereunder shall be deemed given when hand delivered or when mailed by registered or certified mail, postage prepaid, to the Borrower at the following address: [Name and Address of Borrower, Attention: Name of Authorized Officer]; and to the Trust at the following address: New Jersey Environmental Infrastructure Trust, 3131 Princeton Pike, Building 4, Suite 216, Lawrenceville, New Jersey 08648-2201, Attention: Executive Director; (b) this Note shall be binding upon the Borrower and its successors and assigns; (c) in the event any provision of this Note is held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof; (d) the obligations of the Borrower pursuant to the terms of this Note may not be assigned by the Borrower for any reason, unless the Trust shall have approved said assignment in writing; (e) this Note may not be amended, supplemented or modified without the prior written consent of the Trust; (f) this Note shall be governed by and construed in accordance with the laws of the State; (g) the Borrower shall, at the request of the Trust, execute and deliver such further instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Note; and (h) whenever the Borrower is required to obtain the determination, approval or consent of the Trust pursuant to the terms hereof, such determination, approval or consent may be either granted or withheld by the Trust in its sole and absolute discretion.

[The remainder of this page has been left blank intentionally.]

**IN WITNESS WHEREOF**, the Borrower has caused this Note to be duly executed, sealed and delivered on the date first above written.

**[NAME OF BORROWER]**

**[SEAL]**

**ATTEST:**

**By:** \_\_\_\_\_  
**Mayor**

\_\_\_\_\_  
**Clerk**

**By:** \_\_\_\_\_  
**Chief Financial Officer**



**[NAME OF PRIVATE BORROWER]**  
**NOTE**  
**RELATING TO:**  
**THE CONSTRUCTION FINANCING TRUST LOAN PROGRAM**  
**OF THE NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST**

\$ \_\_\_\_\_, 201\_\_\_\_  
CFP-18-\_\_\_\_

**FOR VALUE RECEIVED,** \_\_\_\_\_, a corporation duly created and validly existing pursuant to the laws of the State (as hereinafter defined), and its successors and assigns (the “Borrower”), hereby promises to pay to the order of the **NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST**, a public body corporate and politic with corporate succession, duly created and validly existing under and by virtue of the Act (as hereinafter defined) (the “Trust”), the Principal (as hereinafter defined), together with all unpaid accrued Interest (as hereinafter defined), fees, late charges and other sums due hereunder, if any, in lawful money of the United States of America, on the Maturity Date (as hereinafter defined) or the date of any optional prepayment or acceleration in accordance with the provisions of this note (this “Note”).

**SECTION 1. Definitions.** As used in this Note, unless the context requires otherwise, the following terms shall have the following meanings:

“**Act**” means the “New Jersey Environmental Infrastructure Trust Act”, constituting Chapter 334 of the Pamphlet Laws of 1985 of the State (codified at N.J.S.A. 58:11B-1 *et seq.*), as the same may from time to time be amended and supplemented.

“**Administrative Fee**” means a fee of up to four-tenths of one percent (.40%) of that portion of the Principal identified in clause (i) of the definition thereof (as set forth in this Section 1), or such lesser amount, if any, as the Trust may determine from time to time.

“**Anticipated Financing Program**” means the financing program of the Trust, pursuant to which the Trust will issue its Trust Bonds for the purpose of financing, on a long term basis, the Project and other projects of certain qualifying borrowers.

“**Anticipated Long Term Loan**” means the long term loan made by the Trust to the Borrower from the proceeds of its Trust Bonds, as part of the Anticipated Financing Program.

“**Authorized Officer**” means any person authorized by the Borrower or the Trust, as the case may be, to perform any act or execute any document relating to the Loan or this Note.

“**Borrower Note Resolution**” means the [resolution][indenture] of the Borrower entitled “[\_\_\_\_\_]”, [adopted on][dated] [\_\_\_\_\_], as amended and supplemented from time to time, pursuant to which this Note has been issued.

**“Business Corporation Law”** means the “New Jersey Business Corporation Act”, constituting Chapter 263 of the Pamphlet Laws of 1968 of the State (codified at N.J.S.A. 14A:1-1 *et seq.*), as the same may from time to time be amended and supplemented.

**“Code”** means the Internal Revenue Code of 1986, as the same may from time to time be amended and supplemented, including any regulations promulgated thereunder, any successor code thereto and any administrative or judicial interpretations thereof.

**“Cost”** means those costs that are allocable to the Project, as shall be determined on a project-specific basis in accordance with the Regulations, as further set forth in Exhibit B hereto, (i) as such Exhibit B shall be supplemented by an Authorized Officer of the Trust by means of either a substitute Exhibit B or an additional Exhibit B, such supplement to be implemented concurrently with the supplement to Exhibit A-1 hereto (as provided in the definition of “Project” as set forth herein), and (ii) as the then-current Exhibit B may be amended by subsequent changes to eligible costs as evidenced by a certificate of an Authorized Officer of the Trust.

**“Environmental Infrastructure Facilities”** means Wastewater Treatment Facilities, Stormwater Management Facilities or Water Supply Facilities (as such terms are defined in the Regulations).

**“Environmental Infrastructure System”** means the Environmental Infrastructure Facilities of the Borrower, including the Project, for which the Borrower is receiving the Loan.

**“Event of Default”** means any occurrence or event specified in Section 6 hereof.

**“Fund Portion”** means, on any date, an amount equal to seventy-five percent (75%) of the Principal of the Loan on such date, exclusive of that portion of the Principal of the Loan that is allocable to the NJDEP Loan Origination Fee, which NJDEP Loan Origination Fee shall be financed exclusively from the Trust Portion.

**“Interest”** means the interest charged on the outstanding Principal of the Loan at a rate of (a) with respect to the Trust Portion of the Principal, the applicable Trust Portion Interest Rate and (b) with respect to the Fund Portion of the Principal, 0.00%, and payable by the Borrower to the Trust (i) on the Maturity Date or (ii) with respect to any optional prepayment or acceleration of the Loan pursuant to the terms of this Note, on the date of such optional prepayment or acceleration, as the case may be.

**“Loan”** means the loan of the Principal, made by the Trust to the Borrower to finance or refinance a portion of the Cost of the Project, as evidenced by this Note.

**“Loan Disbursement Requisition”** means the requisition, to be executed by an Authorized Officer of the Borrower and approved by the NJDEP, in a form to be determined by the Trust and the NJDEP.

**“Maturity Date”** means June 30, 2021, or (i) such earlier date as shall be determined by an Authorized Officer of the Trust in his or her sole discretion, which date shall be determined by such Authorized Officer of the Trust to be the date of the closing for the Anticipated Financing Program, or (ii) such later date (subject to the then-applicable limits of the Act) to be determined by an Authorized Officer of the Trust in his or her sole discretion, pursuant to a written certification thereof, as acknowledged and approved by an Authorized Officer of the Borrower.

**“NJDEP”** means the New Jersey Department of Environmental Protection.

**“NJDEP Loan Origination Fee”** means the “NJDEP Fee” as referenced and defined in Exhibit B hereto, which NJDEP Fee is an administrative fee that is payable by the Borrower to the NJDEP as a portion of the Cost of the Project that has been incurred by the Borrower for engineering and environmental services provided to the Borrower by the NJDEP.

**“Principal”** means the principal amount of the Loan, at any time being the lesser of (i) \_\_\_\_\_ Dollars (\$\_\_\_\_\_), or (ii) the aggregate outstanding amount as shall actually be disbursed to the Borrower by the Trust pursuant to one or more Loan Disbursement Requisitions, which Principal shall be payable by the Borrower to the Trust (i) on the Maturity Date or (ii) with respect to any optional prepayment or acceleration of the Loan pursuant to the terms of this Note, on the date of such optional prepayment or acceleration, as the case may be.

**“Project”** means the Environmental Infrastructure Facilities of the Borrower which constitutes a project for which the Trust is making the Loan to the Borrower, as further described in Exhibit A-1 hereto; provided, however, that the description of the Project, as set forth in Exhibit A-1 attached hereto, shall be supplemented by means of either (i) the substitution of a revised and updated Exhibit A-1 for the current Exhibit A-1 or (ii) the inclusion of an additional Exhibit A-1, in either case, promptly following the certification for funding by the NJDEP of the remaining components of the Project, as applicable, such supplement to be undertaken by an Authorized Officer of the Trust.

**“Regulations”** means the rules and regulations, as applicable, now or hereafter promulgated pursuant to N.J.A.C. 7:22-3 *et seq.*, 7:22-4 *et seq.*, 7:22-5 *et seq.*, 7:22-6 *et seq.*, 7:22-7 *et seq.*, 7:22-8 *et seq.*, 7:22-9 *et seq.* and 7:22-10 *et seq.*, as the same may from time to time be amended and supplemented.

**“State”** means the State of New Jersey.

**“Trust Bonds”** means the revenue bonds of the Trust to be issued, as part of the Anticipated Financing Program.

**“Trust Portion”** means, on any date, an amount equal to the aggregate of (i) twenty-five percent (25%) of the Principal of the Loan on such date, exclusive of that portion of the Principal of the Loan that is allocable to the NJDEP Loan Origination Fee, plus (ii) one hundred percent

(100%) of that portion of the Principal of the Loan that is allocable to the NJDEP Loan Origination Fee.

**“Trust Portion Interest Rate”** means, with respect to each disbursement of proceeds of the Trust Portion of the Loan, (a) to the extent that such disbursement is funded from moneys appropriated to the Trust, for the Construction Financing Trust Loan Program of the Trust, pursuant to an appropriations act of the State, the Trust Portion Interest Rate shall equal 0.00%, (b) to the extent that such disbursement is funded from available moneys of the Trust that are neither (i) appropriated to the Trust as provided by the preceding clause (a), nor (ii) borrowed from a financial institution pursuant to a line of credit or other similar financial instrument as provided by the succeeding clause (c), the Trust Portion Interest Rate shall equal the interest rate that is published as either the Thompson Financial TM3 “AAA” Municipal Market Data General Obligation Index (AMT) or the “BVAL” Index (relating to alternative minimum tax credits) of Bloomberg L.P. (or any subsidiary thereof), (with the particular index that is used by the Trust to be selected by an Authorized Officer of the Trust) or, if such indexes are no longer published on such date, such successor index as may be selected by an Authorized Officer of the Trust, in each case for the number of years that corresponds to the length of time from the date such disbursement is made available to the Borrower by the Trust to the Maturity Date, rounding up to the nearest year, or (c) to the extent that such disbursement is funded from available moneys of the Trust borrowed from a financial institution pursuant to a line of credit or other similar financial instrument, the Trust Portion Interest Rate shall equal the actual rate of interest established by the applicable financial institution pursuant to a competitive or negotiated solicitation by the Trust with respect to such line of credit or other financial instrument.

**SECTION 2. Representations of the Borrower.** The Borrower represents and warrants to the Trust:

(a) Organization. The Borrower: (i) is a corporation duly created and validly existing under and pursuant to the Constitution and laws of the State, including the Business Corporation Law; (ii) has full legal right and authority to execute, attest and deliver this Note, to authorize the authentication of this Note, to sell this Note to the Trust, and to perform its obligations hereunder, and (iii) has duly authorized, approved and consented to all necessary action to be taken by the Borrower for: (A) the issuance of this Note, the authentication of this Note, the sale thereof to the Trust and the due performance of its obligations hereunder and (B) the execution, delivery and due performance of all certificates and other instruments that may be required to be executed, delivered and performed by the Borrower in order to carry out and give effect to this Note.

(b) Authority. This Note has been duly authorized by the Borrower, and duly executed, attested and delivered by Authorized Officers of the Borrower, and duly authenticated by the trustee or the paying agent pursuant to the Borrower Note Resolution. This Note has been duly sold by the Borrower to the Trust and duly issued by the Borrower and constitutes a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms, except as the enforcement thereof may be affected by bankruptcy, insolvency or other laws or the application by a court of legal or equitable principles affecting creditors’ rights.

(c) Pending Litigation. There are no proceedings pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower that, if adversely determined, would adversely affect (i) the condition (financial or otherwise) of the Borrower, (ii) the adoption of the Borrower Note Resolution, (iii) the ability of the Borrower to satisfy all of its Loan repayment obligations hereunder, (iv) the authorization, execution, attestation, authentication or delivery of this Note, (v) the issuance of this Note and the sale thereof to the Trust, and (vi) the Borrower's ability otherwise to observe and perform its duties, covenants, obligations and agreements under this Note.

(d) Compliance with Existing Laws and Agreements; Governmental Consent. (i) The authorization, execution, attestation and delivery of this Note by the Borrower, (ii) the authentication of this Note by the trustee or paying agent pursuant to the Borrower Note Resolution, (iii) the adoption of the Borrower Note Resolution, (iv) the sale of this Note to the Trust, (v) the observation and performance by the Borrower of its duties, covenants, obligations and agreements hereunder, including, without limitation, the repayment of the Loan and all other amounts due hereunder, and (vi) the undertaking and completion of the Project, will not (A) other than the lien, charge or encumbrance created by this Note, result in the creation or imposition of any lien, charge or encumbrance upon any properties or assets of the Borrower pursuant to, (B) result in any breach of any of the terms, conditions or provisions of, or (C) constitute a default under, any existing ordinance or resolution, outstanding debt or lease obligation, trust agreement, indenture, mortgage, deed of trust, loan agreement or other instrument to which the Borrower is a party or by which the Borrower, its Environmental Infrastructure System or any of its properties or assets may be bound, nor will such action result in any violation of the provisions of the charter or other document pursuant to which the Borrower was established or any laws, ordinances, injunctions, judgments, decrees, rules, regulations or existing orders of any court or governmental or administrative agency, authority or person to which the Borrower, its Environmental Infrastructure System or its properties or operations are subject. The Borrower has obtained all permits and approvals required to date by any governmental body or officer for the authorization, execution, attestation, authentication and delivery of this Note, for the sale of this Note to the Trust, for the making, observance and performance by the Borrower of its duties, covenants, obligations and agreements under this Note, and for the undertaking and completion of the Project.

(e) Reliance. The Borrower hereby acknowledges that the Trust is making the Loan to the Borrower pursuant to the terms hereof in reliance upon each of the representations of the Borrower set forth in this Section 2.

### **SECTION 3. Covenants of the Borrower.**

(a) Participation in the Anticipated Financing Program. The Borrower covenants and agrees that it shall undertake and complete in a timely manner all conditions precedent identified by the Trust relating to (i) the participation by the Borrower in the Anticipated Financing Program and (ii) the qualification by the Borrower for receipt of the Anticipated Long Term Loan.



(b) Pledge. The Borrower unconditionally and irrevocably promises to make the Loan repayments in accordance with the terms of, and to the extent provided in, the Borrower Note Resolution for the punctual repayment of the Loan and all other amounts due pursuant to this terms of this Note.

(c) Disposition of Environmental Infrastructure System. The Borrower covenants and agrees that it shall not sell, lease, abandon or otherwise dispose of all or substantially all of its Environmental Infrastructure System without the express written consent of the Trust, which consent may or may not be granted by the Trust in its sole discretion.

(d) Financing With Tax-Exempt Bonds. The Borrower acknowledges, covenants and agrees that it is the intention of the Borrower to finance the Project on a long term basis with proceeds of Trust Bonds now or hereinafter issued, the interest on which is excluded from gross income for purposes of federal income taxation pursuant to Section 103(a) of the Code (“tax-exempt bonds”). In furtherance of such long term financing with tax-exempt bonds, the Borrower covenants that, except to the extent expressly permitted in writing by the Trust, the Borrower will not take any action or permit any action to be taken which would result in any of the proceeds of the Loan being used (directly or indirectly) to make or finance loans to persons other than the Borrower. In addition, the Borrower covenants and agrees that (i) all of the proceeds of the Loan will be used to pay costs of an exempt facility, within the meaning of Section 142 of the Code, which were paid and incurred by the Borrower no more than 60 days before the date on which the Trust adopted a declaration of intent with respect to the Project, and (ii) no portion of the Project will be investment property, within the meaning of Section 148(b) of the Code. The Borrower covenants and agrees that any Costs to be paid or reimbursed with proceeds of the Loan will result in the expenditure of proceeds under Treasury Regulations §1.148-6(d) and Treasury Regulations §1.150-2, for costs subject to the allowance for depreciation provided in Section 167 of the Code which are chargeable to the capital account of the Borrower with respect to such exempt facility.

(e) Operation and Maintenance of Environmental Infrastructure System. The Borrower covenants and agrees that it shall maintain its Environmental Infrastructure System in good repair, working order and operating condition, and make all necessary and proper repairs and improvements with respect thereto.

(f) Records and Accounts; Inspections. The Borrower covenants and agrees that it shall keep accurate records and accounts for its Environmental Infrastructure System, separate and distinct from its other records and accounts, which shall be audited annually by an independent registered certified public accountant and shall be made available for inspection by the Trust upon prior written notice. The Borrower shall permit the Trust to inspect the Environmental Infrastructure System.

(g) Insurance. The Borrower covenants and agrees that it shall maintain insurance policies providing against risk of direct physical loss, damage or destruction of its Environmental Infrastructure System, in an amount that will satisfy all applicable regulatory requirements. The Borrower covenants and agrees that it shall include, or cause to be included, the Trust as an

additional “named insured” on any certificate of liability insurance procured by the Borrower and by any contractor or subcontractor for the Project.

(h) Reliance. The Borrower hereby acknowledges that the Trust is making the Loan to the Borrower pursuant to the terms hereof in reliance upon each of the covenants of the Borrower set forth in this Section 3.

**SECTION 4. Disbursement of the Loan Proceeds; Amounts Payable; Prepayment; and Late Fee.** The Trust shall effectuate the Loan to the Borrower by making one or more disbursements to the Borrower promptly after receipt by the Trust of a Loan Disbursement Requisition and the approval of such Loan Disbursement Requisition by an Authorized Officer of the Trust or designee thereof, each such disbursement and the date thereof to be recorded by an Authorized Officer of the Trust on the table attached as Exhibit A-2 hereto; provided, however, that no Loan Disbursement Requisition shall be approved by the Trust for disbursement unless and until the portion of the Project to which such Loan Disbursement Requisition relates has been certified for funding by the NJDEP. It is expected that the proceeds of the Loan will be disbursed to the Borrower in accordance with Exhibit C hereto, as Exhibit C shall be supplemented by an Authorized Officer of the Trust by means of either a substitute Exhibit C or an additional Exhibit C, such supplement to be implemented concurrently with the supplement to Exhibit A-1 hereto (as provided in the definition of “Project” as set forth herein). The latest date upon which the Borrower may submit to the Trust a Loan Disbursement Requisition is the business day immediately preceding the date fixed by the Trust for the sale of its bonds in connection with the Anticipated Financing Program, or such alternative date as shall be identified by the Trust for the Borrower in writing. On the Maturity Date, the Borrower shall repay the Loan to the Trust in an amount equal to: (i) the Principal; (ii) the Interest; (iii) the Administrative Fee, if any; and (iv) any other amounts due and owing pursuant to the provisions of this Note. The Borrower may prepay the Loan obligations hereunder, in whole or in part, upon receipt of the prior written consent of an Authorized Officer of the Trust. Each payment made to the Trust shall be applied to the payment of, first, the Interest then due and payable, second, the Principal, third, the Administrative Fee, if any, fourth, any late charges, and, finally, any other amount due pursuant to the provisions of this Note. In the event that the repayment obligation set forth in this Note is received by the Trust later than the Maturity Date, a late fee shall be payable to the Trust in an amount equal to the greater of twelve percent (12%) per annum or the prime rate as published in the Wall Street Journal on the Maturity Date plus one half of one percent per annum on such late payment from the Maturity Date to the date it is actually paid; provided, however, that any late payment charges incurred hereunder shall not exceed the maximum interest rate permitted by law. Notwithstanding the provisions of this Section 4 to the contrary, the Borrower hereby acknowledges and agrees that, on the date of issuance of this Note, a disbursement shall be made and shall be recorded by an Authorized Officer of the Trust on the table attached as Exhibit A-2 hereto in the amount recorded thereon. Such disbursement shall be made for the purpose of funding fifty percent (50%) of the NJDEP Loan Origination Fee. Such disbursement shall be paid by the Trust on behalf of the Borrower directly to the NJDEP in satisfaction of the provisions hereof.

Notwithstanding the provisions of this Note to the contrary with respect to the funding, pursuant to this Section 4, of any Loan Disbursement Requisition relating to all or any portion of the

Project: (i) the Borrower hereby acknowledges and agrees that the Trust shall not, and shall not be required to, commit funds, pursuant to the Construction Financing Trust Loan Program of the Trust, to any portion of the Project until such time as the particular portion of the Project in question has been certified for funding by the NJDEP; (ii) no Loan Disbursement Requisition shall be approved by the Trust for disbursement pursuant to this Section 4 unless and until the portion of the Project to which such Loan Disbursement Requisition relates has been certified for funding by the NJDEP; and (iii) the Trust has no obligation pursuant to this Note to make all or any portion of any disbursement pursuant to the provisions of this Section 4 if the Borrower lacks the authority to pay interest on this Note in an amount equal to the Trust Portion Interest Rate.

**SECTION 5. Unconditional Obligations.** The obligation of the Borrower to make the Loan repayments and all other payments required hereunder and the obligation to perform and observe the other duties, covenants, obligations and agreements on its part contained herein shall be absolute and unconditional, and shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner whatsoever while any Loan repayments, or any other payments due hereunder, remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project or Environmental Infrastructure System, commercial frustration of the purpose, any change in the laws of the United States of America or of the State or any political subdivision of either or in the rules or regulations of any governmental authority, any failure of the Trust to perform and observe any agreement or any duty, liability or obligation arising out of this Note, or any rights of set-off, recoupment, abatement or counterclaim that the Borrower might have against the Trust or any other party; provided, however, that payments hereunder shall not constitute a waiver of any such rights.

**SECTION 6. Events of Default.** The following events shall constitute an “Event of Default” hereunder: (i) failure by the Borrower to pay, when due, any and all of its Loan repayment obligations hereunder, and any other payment obligations due hereunder; (ii) failure by the Borrower to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed pursuant to the terms of this Note; (iii) any representation made by the Borrower contained in this Note or in any instrument furnished in compliance with or with reference to this Note is false or misleading in any material respect; and (iv) a petition is filed by or against the Borrower under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Note or thereafter enacted, unless in the case of any such petition filed against the Borrower such petition shall be dismissed within thirty (30) days after such filing and such dismissal shall be final and not subject to appeal, or the Borrower shall become insolvent or bankrupt or shall make an assignment for the benefit of its creditors, or a custodian of the Borrower or any of its property shall be appointed by court order or take possession of the Borrower or its property or assets if such order remains in effect or such possession continues for more than thirty (30) days.

**SECTION 7. Remedies upon Event of Default.** Whenever an Event of Default shall have occurred and be continuing pursuant to the terms hereof, the Borrower hereby

acknowledges and agrees to the rights of the Trust to take any action permitted or required at law or in equity to collect the amounts then due and thereafter to become due hereunder or to enforce the observance and performance of any duty, covenant, obligation or agreement of the Borrower hereunder. If an Event of Default shall have occurred, the Borrower hereby acknowledges and agrees that the Trust shall have the right to declare all Loan repayments and all other amounts due hereunder to be due and payable immediately without further notice or demand. The Borrower hereby acknowledges and agrees that no remedy herein is intended to be exclusive, and every remedy shall be cumulative and in addition to every other remedy given under this Note or now or hereafter existing at law or in equity. The Borrower hereby further acknowledges and agrees that no delay or omission by the Trust to exercise any remedy or right accruing upon any Event of Default shall impair any such remedy or right or shall be construed to be a waiver thereof, but any such remedy or right may be exercised as often as may be deemed expedient. The Borrower hereby agrees that upon demand it shall pay to the Trust the reasonable fees and expenses of attorneys and other reasonable expenses (including, without limitation, the reasonably allocated costs of in-house counsel and legal staff) incurred in the collection of Loan repayments or any sum due hereunder or in the enforcement of the observation or performance of any obligations or agreements of the Borrower upon an Event of Default. Any moneys collected by the Trust pursuant to this Section 7 shall be applied first to pay any attorneys' fees or other fees and expenses owed by the Borrower.

**SECTION 8. Certain Miscellaneous Provisions.** The Borrower hereby acknowledges and agrees as follows: (a) all notices hereunder shall be deemed given when hand delivered or when mailed by registered or certified mail, postage prepaid, to the Borrower at the following address: [Name and Address of Borrower, Attention: Name of Authorized Officer]; and to the Trust at the following address: New Jersey Environmental Infrastructure Trust, 3131 Princeton Pike, Building 4, Suite 216, Lawrenceville, New Jersey 08648-2201, Attention: Executive Director; (b) this Note shall be binding upon the Borrower and its successors and assigns; (c) in the event any provision of this Note is held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof; (d) the obligations of the Borrower pursuant to the terms of this Note may not be assigned by the Borrower for any reason, unless the Trust shall have approved said assignment in writing; (e) this Note may not be amended, supplemented or modified without the prior written consent of the Trust; (f) this Note shall be governed by and construed in accordance with the laws of the State; (g) the Borrower shall, at the request of the Trust, execute and deliver such further instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Note; and (h) whenever the Borrower is required to obtain the determination, approval or consent of the Trust pursuant to the terms hereof, such determination, approval or consent may be either granted or withheld by the Trust in its sole and absolute discretion.

[The remainder of this page has been left blank intentionally.]

**IN WITNESS WHEREOF**, the Borrower has caused this Note to be duly executed, sealed and delivered on the date first above written.

**[NAME OF BORROWER]**

**[SEAL]**

**ATTEST:**

**By:** \_\_\_\_\_  
**Authorized Officer**

\_\_\_\_\_  
**Authorized Officer**

**TRUSTEE'S CERTIFICATE OF AUTHENTICATION**

This Note is delivered pursuant to the within-mentioned Borrower Note Resolution.

\_\_\_\_\_,  
**as Trustee**

**By:** \_\_\_\_\_  
**Authorized Signatory**

**EXHIBIT A-2**

**Loan Disbursements**

<b>Date of Loan Disbursement</b>	<b>Amount of Disbursement: Trust Portion</b>	<b>Amount of Disbursement: Fund Portion</b>

**[NAME OF PRIVATE BORROWER]**  
**NOTE**  
**RELATING TO:**  
**THE CONSTRUCTION FINANCING TRUST LOAN PROGRAM**  
**OF THE NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST**

\$ \_\_\_\_\_, 201\_\_\_\_  
CFP-18-\_\_\_\_

**FOR VALUE RECEIVED,** \_\_\_\_\_, a corporation duly created and validly existing pursuant to the laws of the State (as hereinafter defined), and its successors and assigns (the “Borrower”), hereby promises to pay to the order of the **NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST**, a public body corporate and politic with corporate succession, duly created and validly existing under and by virtue of the Act (as hereinafter defined) (the “Trust”), the Principal (as hereinafter defined), together with all unpaid accrued Interest (as hereinafter defined), fees, late charges and other sums due hereunder, if any, in lawful money of the United States of America, on the Maturity Date (as hereinafter defined) or the date of any optional prepayment or acceleration in accordance with the provisions of this note (this “Note”).

**SECTION 1. Definitions.** As used in this Note, unless the context requires otherwise, the following terms shall have the following meanings:

“**Act**” means the “New Jersey Environmental Infrastructure Trust Act”, constituting Chapter 334 of the Pamphlet Laws of 1985 of the State (codified at N.J.S.A. 58:11B-1 *et seq.*), as the same may from time to time be amended and supplemented.

“**Administrative Fee**” means a fee of up to four-tenths of one percent (.40%) of that portion of the Principal identified in clause (i) of the definition thereof (as set forth in this Section 1), or such lesser amount, if any, as the Trust may determine from time to time.

“**Anticipated Financing Program**” means the financing program of the Trust, pursuant to which the Trust will issue its Trust Bonds for the purpose of financing, on a long term basis, the Project and other projects of certain qualifying borrowers.

“**Anticipated Long Term Loan**” means the long term loan made by the Trust to the Borrower from the proceeds of its Trust Bonds, as part of the Anticipated Financing Program.

“**Authorized Officer**” means any person authorized by the Borrower or the Trust, as the case may be, to perform any act or execute any document relating to the Loan or this Note.

“**Borrower Note Resolution**” means the [resolution][indenture] of the Borrower entitled “[\_\_\_\_\_]”, [adopted on][dated] [\_\_\_\_\_], as amended and supplemented from time to time, pursuant to which this Note has been issued.



**“Business Corporation Law”** means the “New Jersey Business Corporation Act”, constituting Chapter 263 of the Pamphlet Laws of 1968 of the State (codified at N.J.S.A. 14A:1-1 *et seq.*), as the same may from time to time be amended and supplemented.

**“Code”** means the Internal Revenue Code of 1986, as the same may from time to time be amended and supplemented, including any regulations promulgated thereunder, any successor code thereto and any administrative or judicial interpretations thereof.

**“Cost”** means those costs that are allocable to the Project, as shall be determined on a project-specific basis in accordance with the Regulations, as further set forth in Exhibit B hereto, (i) as such Exhibit B shall be supplemented by an Authorized Officer of the Trust by means of either a substitute Exhibit B or an additional Exhibit B, such supplement to be implemented concurrently with the supplement to Exhibit A-1 hereto (as provided in the definition of “Project” as set forth herein), and (ii) as the then-current Exhibit B may be amended by subsequent changes to eligible costs as evidenced by a certificate of an Authorized Officer of the Trust.

**“Environmental Infrastructure Facilities”** means Wastewater Treatment Facilities, Stormwater Management Facilities or Water Supply Facilities (as such terms are defined in the Regulations).

**“Environmental Infrastructure System”** means the Environmental Infrastructure Facilities of the Borrower, including the Project, for which the Borrower is receiving the Loan.

**“Event of Default”** means any occurrence or event specified in Section 6 hereof.

**“Fund Portion”** means, on any date, an amount equal to seventy-five percent (75%) of the Principal of the Loan on such date, exclusive of that portion of the Principal of the Loan that is allocable to the NJDEP Loan Origination Fee, which NJDEP Loan Origination Fee shall be financed exclusively from the Trust Portion.

**“Interest”** means the interest charged on the outstanding Principal of the Loan at a rate of (a) with respect to the Trust Portion of the Principal, the applicable Trust Portion Interest Rate and (b) with respect to the Fund Portion of the Principal, 0.00%, and payable by the Borrower to the Trust (i) on the Maturity Date or (ii) with respect to any optional prepayment or acceleration of the Loan pursuant to the terms of this Note, on the date of such optional prepayment or acceleration, as the case may be.

**“Loan”** means the loan of the Principal, made by the Trust to the Borrower to finance or refinance a portion of the Cost of the Project, as evidenced by this Note.

**“Loan Disbursement Requisition”** means the requisition, to be executed by an Authorized Officer of the Borrower and approved by the NJDEP, in a form to be determined by the Trust and the NJDEP.

**“Maturity Date”** means June 30, 2021, or (i) such earlier date as shall be determined by an Authorized Officer of the Trust in his or her sole discretion, which date shall be determined by such Authorized Officer of the Trust to be the date of the closing for the Anticipated Financing Program, or (ii) such later date (subject to the then-applicable limits of the Act) to be determined by an Authorized Officer of the Trust in his or her sole discretion, pursuant to a written certification thereof, as acknowledged and approved by an Authorized Officer of the Borrower.

**“NJDEP”** means the New Jersey Department of Environmental Protection.

**“NJDEP Loan Origination Fee”** means the “NJDEP Fee” as referenced and defined in Exhibit B hereto, which NJDEP Fee is an administrative fee that is payable by the Borrower to the NJDEP as a portion of the Cost of the Project that has been incurred by the Borrower for engineering and environmental services provided to the Borrower by the NJDEP.

**“Principal”** means the principal amount of the Loan, at any time being the lesser of (i) \_\_\_\_\_ Dollars (\$\_\_\_\_\_), or (ii) the aggregate outstanding amount as shall actually be disbursed to the Borrower by the Trust pursuant to one or more Loan Disbursement Requisitions, which Principal shall be payable by the Borrower to the Trust (i) on the Maturity Date or (ii) with respect to any optional prepayment or acceleration of the Loan pursuant to the terms of this Note, on the date of such optional prepayment or acceleration, as the case may be.

**“Project”** means the Environmental Infrastructure Facilities of the Borrower which constitutes a project for which the Trust is making the Loan to the Borrower, as further described in Exhibit A-1 hereto; provided, however, that the description of the Project, as set forth in Exhibit A-1 attached hereto, shall be supplemented by means of either (i) the substitution of a revised and updated Exhibit A-1 for the current Exhibit A-1 or (ii) the inclusion of an additional Exhibit A-1, in either case, promptly following the certification for funding by the NJDEP of the remaining components of the Project, as applicable, such supplement to be undertaken by an Authorized Officer of the Trust.

**“Regulations”** means the rules and regulations, as applicable, now or hereafter promulgated pursuant to N.J.A.C. 7:22-3 *et seq.*, 7:22-4 *et seq.*, 7:22-5 *et seq.*, 7:22-6 *et seq.*, 7:22-7 *et seq.*, 7:22-8 *et seq.*, 7:22-9 *et seq.* and 7:22-10 *et seq.*, as the same may from time to time be amended and supplemented.

**“State”** means the State of New Jersey.

**“Trust Bonds”** means the revenue bonds of the Trust to be issued, as part of the Anticipated Financing Program.

**“Trust Portion”** means, on any date, an amount equal to the aggregate of (i) twenty-five percent (25%) of the Principal of the Loan on such date, exclusive of that portion of the Principal of the Loan that is allocable to the NJDEP Loan Origination Fee, plus (ii) one hundred percent

(100%) of that portion of the Principal of the Loan that is allocable to the NJDEP Loan Origination Fee.

**“Trust Portion Interest Rate”** means, with respect to each disbursement of proceeds of the Trust Portion of the Loan, (a) to the extent that such disbursement is funded from moneys appropriated to the Trust, for the Construction Financing Trust Loan Program of the Trust, pursuant to an appropriations act of the State, the Trust Portion Interest Rate shall equal 0.00%, (b) to the extent that such disbursement is funded from available moneys of the Trust that are neither (i) appropriated to the Trust as provided by the preceding clause (a), nor (ii) borrowed from a financial institution pursuant to a line of credit or other similar financial instrument as provided by the succeeding clause (c), the Trust Portion Interest Rate shall equal the interest rate that is published as either the Thompson Financial TM3 “AAA” Municipal Market Data General Obligation Index (AMT) or the “BVAL” Index (relating to alternative minimum tax credits) of Bloomberg L.P. (or any subsidiary thereof), (with the particular index that is used by the Trust to be selected by an Authorized Officer of the Trust) or, if such indexes are no longer published on such date, such successor index as may be selected by an Authorized Officer of the Trust, in each case for the number of years that corresponds to the length of time from the date such disbursement is made available to the Borrower by the Trust to the Maturity Date, rounding up to the nearest year, or (c) to the extent that such disbursement is funded from available moneys of the Trust borrowed from a financial institution pursuant to a line of credit or other similar financial instrument, the Trust Portion Interest Rate shall equal the actual rate of interest established by the applicable financial institution pursuant to a competitive or negotiated solicitation by the Trust with respect to such line of credit or other financial instrument.

**SECTION 2. Representations of the Borrower.** The Borrower represents and warrants to the Trust:

(a) Organization. The Borrower: (i) is a corporation duly created and validly existing under and pursuant to the Constitution and laws of the State, including the Business Corporation Law; (ii) has full legal right and authority to execute, attest and deliver this Note, to authorize the authentication of this Note, to sell this Note to the Trust, and to perform its obligations hereunder, and (iii) has duly authorized, approved and consented to all necessary action to be taken by the Borrower for: (A) the issuance of this Note, the authentication of this Note, the sale thereof to the Trust and the due performance of its obligations hereunder and (B) the execution, delivery and due performance of all certificates and other instruments that may be required to be executed, delivered and performed by the Borrower in order to carry out and give effect to this Note.

(b) Authority. This Note has been duly authorized by the Borrower, and duly executed, attested and delivered by Authorized Officers of the Borrower, and duly authenticated by the trustee or the paying agent pursuant to the Borrower Note Resolution. This Note has been duly sold by the Borrower to the Trust and duly issued by the Borrower and constitutes a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms, except as the enforcement thereof may be affected by bankruptcy, insolvency or other laws or the application by a court of legal or equitable principles affecting creditors’ rights.

(c) Pending Litigation. There are no proceedings pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower that, if adversely determined, would adversely affect (i) the condition (financial or otherwise) of the Borrower, (ii) the adoption of the Borrower Note Resolution, (iii) the ability of the Borrower to satisfy all of its Loan repayment obligations hereunder, (iv) the authorization, execution, attestation, authentication or delivery of this Note, (v) the issuance of this Note and the sale thereof to the Trust, and (vi) the Borrower's ability otherwise to observe and perform its duties, covenants, obligations and agreements under this Note.

(d) Compliance with Existing Laws and Agreements; Governmental Consent. (i) The authorization, execution, attestation and delivery of this Note by the Borrower, (ii) the authentication of this Note by the trustee or paying agent pursuant to the Borrower Note Resolution, (iii) the adoption of the Borrower Note Resolution, (iv) the sale of this Note to the Trust, (v) the observation and performance by the Borrower of its duties, covenants, obligations and agreements hereunder, including, without limitation, the repayment of the Loan and all other amounts due hereunder, and (vi) the undertaking and completion of the Project, will not (A) other than the lien, charge or encumbrance created by this Note, result in the creation or imposition of any lien, charge or encumbrance upon any properties or assets of the Borrower pursuant to, (B) result in any breach of any of the terms, conditions or provisions of, or (C) constitute a default under, any existing ordinance or resolution, outstanding debt or lease obligation, trust agreement, indenture, mortgage, deed of trust, loan agreement or other instrument to which the Borrower is a party or by which the Borrower, its Environmental Infrastructure System or any of its properties or assets may be bound, nor will such action result in any violation of the provisions of the charter or other document pursuant to which the Borrower was established or any laws, ordinances, injunctions, judgments, decrees, rules, regulations or existing orders of any court or governmental or administrative agency, authority or person to which the Borrower, its Environmental Infrastructure System or its properties or operations are subject. The Borrower has obtained all permits and approvals required to date by any governmental body or officer for the authorization, execution, attestation, authentication and delivery of this Note, for the sale of this Note to the Trust, for the making, observance and performance by the Borrower of its duties, covenants, obligations and agreements under this Note, and for the undertaking and completion of the Project.

(e) Reliance. The Borrower hereby acknowledges that the Trust is making the Loan to the Borrower pursuant to the terms hereof in reliance upon each of the representations of the Borrower set forth in this Section 2.

### **SECTION 3. Covenants of the Borrower.**

(a) Participation in the Anticipated Financing Program. The Borrower covenants and agrees that it shall undertake and complete in a timely manner all conditions precedent identified by the Trust relating to (i) the participation by the Borrower in the Anticipated Financing Program and (ii) the qualification by the Borrower for receipt of the Anticipated Long Term Loan.

(b) Pledge. The Borrower unconditionally and irrevocably promises to make the Loan repayments in accordance with the terms of, and to the extent provided in, the Borrower Note Resolution for the punctual repayment of the Loan and all other amounts due pursuant to this terms of this Note.

(c) Disposition of Environmental Infrastructure System. The Borrower covenants and agrees that it shall not sell, lease, abandon or otherwise dispose of all or substantially all of its Environmental Infrastructure System without the express written consent of the Trust, which consent may or may not be granted by the Trust in its sole discretion.

(d) Financing With Tax-Exempt Bonds. The Borrower acknowledges, covenants and agrees that it is the intention of the Borrower to finance the Project on a long term basis with proceeds of Trust Bonds now or hereinafter issued, the interest on which is excluded from gross income for purposes of federal income taxation pursuant to Section 103(a) of the Code (“tax-exempt bonds”). In furtherance of such long term financing with tax-exempt bonds, the Borrower covenants that, except to the extent expressly permitted in writing by the Trust, the Borrower will not take any action or permit any action to be taken which would result in any of the proceeds of the Loan being used (directly or indirectly) to make or finance loans to persons other than the Borrower. In addition, the Borrower covenants and agrees that (i) all of the proceeds of the Loan will be used to pay costs of an exempt facility, within the meaning of Section 142 of the Code, which were paid and incurred by the Borrower no more than 60 days before the date on which the Trust adopted a declaration of intent with respect to the Project, and (ii) no portion of the Project will be investment property, within the meaning of Section 148(b) of the Code. The Borrower covenants and agrees that any Costs to be paid or reimbursed with proceeds of the Loan will result in the expenditure of proceeds under Treasury Regulations §1.148-6(d) and Treasury Regulations §1.150-2, for costs subject to the allowance for depreciation provided in Section 167 of the Code which are chargeable to the capital account of the Borrower with respect to such exempt facility.

(e) Operation and Maintenance of Environmental Infrastructure System. The Borrower covenants and agrees that it shall maintain its Environmental Infrastructure System in good repair, working order and operating condition, and make all necessary and proper repairs and improvements with respect thereto.

(f) Records and Accounts; Inspections. The Borrower covenants and agrees that it shall keep accurate records and accounts for its Environmental Infrastructure System, separate and distinct from its other records and accounts, which shall be audited annually by an independent registered certified public accountant and shall be made available for inspection by the Trust upon prior written notice. The Borrower shall permit the Trust to inspect the Environmental Infrastructure System.

(g) Insurance. The Borrower covenants and agrees that it shall maintain insurance policies providing against risk of direct physical loss, damage or destruction of its Environmental Infrastructure System, in an amount that will satisfy all applicable regulatory requirements. The Borrower covenants and agrees that it shall include, or cause to be included, the Trust as an

additional “named insured” on any certificate of liability insurance procured by the Borrower and by any contractor or subcontractor for the Project.

(h) Reliance. The Borrower hereby acknowledges that the Trust is making the Loan to the Borrower pursuant to the terms hereof in reliance upon each of the covenants of the Borrower set forth in this Section 3.

**SECTION 4. Disbursement of the Loan Proceeds; Amounts Payable; Prepayment; and Late Fee.** The Trust shall effectuate the Loan to the Borrower by making one or more disbursements to the Borrower promptly after receipt by the Trust of a Loan Disbursement Requisition and the approval of such Loan Disbursement Requisition by an Authorized Officer of the Trust or designee thereof, each such disbursement and the date thereof to be recorded by an Authorized Officer of the Trust on the table attached as Exhibit A-2 hereto; provided, however, that no Loan Disbursement Requisition shall be approved by the Trust for disbursement unless and until the portion of the Project to which such Loan Disbursement Requisition relates has been certified for funding by the NJDEP. It is expected that the proceeds of the Loan will be disbursed to the Borrower in accordance with Exhibit C hereto, as Exhibit C shall be supplemented by an Authorized Officer of the Trust by means of either a substitute Exhibit C or an additional Exhibit C, such supplement to be implemented concurrently with the supplement to Exhibit A-1 hereto (as provided in the definition of “Project” as set forth herein). The latest date upon which the Borrower may submit to the Trust a Loan Disbursement Requisition is the business day immediately preceding the date fixed by the Trust for the sale of its bonds in connection with the Anticipated Financing Program, or such alternative date as shall be identified by the Trust for the Borrower in writing. On the Maturity Date, the Borrower shall repay the Loan to the Trust in an amount equal to: (i) the Principal; (ii) the Interest; (iii) the Administrative Fee, if any; and (iv) any other amounts due and owing pursuant to the provisions of this Note. The Borrower may prepay the Loan obligations hereunder, in whole or in part, upon receipt of the prior written consent of an Authorized Officer of the Trust. Each payment made to the Trust shall be applied to the payment of, first, the Interest then due and payable, second, the Principal, third, the Administrative Fee, if any, fourth, any late charges, and, finally, any other amount due pursuant to the provisions of this Note. In the event that the repayment obligation set forth in this Note is received by the Trust later than the Maturity Date, a late fee shall be payable to the Trust in an amount equal to the greater of twelve percent (12%) per annum or the prime rate as published in the Wall Street Journal on the Maturity Date plus one half of one percent per annum on such late payment from the Maturity Date to the date it is actually paid; provided, however, that any late payment charges incurred hereunder shall not exceed the maximum interest rate permitted by law. Notwithstanding the provisions of this Section 4 to the contrary, the Borrower hereby acknowledges and agrees that, on the date of issuance of this Note, a disbursement shall be made and shall be recorded by an Authorized Officer of the Trust on the table attached as Exhibit A-2 hereto in the amount recorded thereon. Such disbursement shall be made for the purpose of funding fifty percent (50%) of the NJDEP Loan Origination Fee. Such disbursement shall be paid by the Trust on behalf of the Borrower directly to the NJDEP in satisfaction of the provisions hereof.

Notwithstanding the provisions of this Note to the contrary with respect to the funding, pursuant to this Section 4, of any Loan Disbursement Requisition relating to all or any portion of the

Project: (i) the Borrower hereby acknowledges and agrees that the Trust shall not, and shall not be required to, commit funds, pursuant to the Construction Financing Trust Loan Program of the Trust, to any portion of the Project until such time as the particular portion of the Project in question has been certified for funding by the NJDEP; (ii) no Loan Disbursement Requisition shall be approved by the Trust for disbursement pursuant to this Section 4 unless and until the portion of the Project to which such Loan Disbursement Requisition relates has been certified for funding by the NJDEP; and (iii) the Trust has no obligation pursuant to this Note to make all or any portion of any disbursement pursuant to the provisions of this Section 4 if the Borrower lacks the authority to pay interest on this Note in an amount equal to the Trust Portion Interest Rate.

**SECTION 5. Unconditional Obligations.** The obligation of the Borrower to make the Loan repayments and all other payments required hereunder and the obligation to perform and observe the other duties, covenants, obligations and agreements on its part contained herein shall be absolute and unconditional, and shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner whatsoever while any Loan repayments, or any other payments due hereunder, remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project or Environmental Infrastructure System, commercial frustration of the purpose, any change in the laws of the United States of America or of the State or any political subdivision of either or in the rules or regulations of any governmental authority, any failure of the Trust to perform and observe any agreement or any duty, liability or obligation arising out of this Note, or any rights of set-off, recoupment, abatement or counterclaim that the Borrower might have against the Trust or any other party; provided, however, that payments hereunder shall not constitute a waiver of any such rights.

**SECTION 6. Events of Default.** The following events shall constitute an “Event of Default” hereunder: (i) failure by the Borrower to pay, when due, any and all of its Loan repayment obligations hereunder, and any other payment obligations due hereunder; (ii) failure by the Borrower to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed pursuant to the terms of this Note; (iii) any representation made by the Borrower contained in this Note or in any instrument furnished in compliance with or with reference to this Note is false or misleading in any material respect; and (iv) a petition is filed by or against the Borrower under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Note or thereafter enacted, unless in the case of any such petition filed against the Borrower such petition shall be dismissed within thirty (30) days after such filing and such dismissal shall be final and not subject to appeal, or the Borrower shall become insolvent or bankrupt or shall make an assignment for the benefit of its creditors, or a custodian of the Borrower or any of its property shall be appointed by court order or take possession of the Borrower or its property or assets if such order remains in effect or such possession continues for more than thirty (30) days.

**SECTION 7. Remedies upon Event of Default.** Whenever an Event of Default shall have occurred and be continuing pursuant to the terms hereof, the Borrower hereby

acknowledges and agrees to the rights of the Trust to take any action permitted or required at law or in equity to collect the amounts then due and thereafter to become due hereunder or to enforce the observance and performance of any duty, covenant, obligation or agreement of the Borrower hereunder. If an Event of Default shall have occurred, the Borrower hereby acknowledges and agrees that the Trust shall have the right to declare all Loan repayments and all other amounts due hereunder to be due and payable immediately without further notice or demand. The Borrower hereby acknowledges and agrees that no remedy herein is intended to be exclusive, and every remedy shall be cumulative and in addition to every other remedy given under this Note or now or hereafter existing at law or in equity. The Borrower hereby further acknowledges and agrees that no delay or omission by the Trust to exercise any remedy or right accruing upon any Event of Default shall impair any such remedy or right or shall be construed to be a waiver thereof, but any such remedy or right may be exercised as often as may be deemed expedient. The Borrower hereby agrees that upon demand it shall pay to the Trust the reasonable fees and expenses of attorneys and other reasonable expenses (including, without limitation, the reasonably allocated costs of in-house counsel and legal staff) incurred in the collection of Loan repayments or any sum due hereunder or in the enforcement of the observation or performance of any obligations or agreements of the Borrower upon an Event of Default. Any moneys collected by the Trust pursuant to this Section 7 shall be applied first to pay any attorneys' fees or other fees and expenses owed by the Borrower.

**SECTION 8. Certain Miscellaneous Provisions.** The Borrower hereby acknowledges and agrees as follows: (a) all notices hereunder shall be deemed given when hand delivered or when mailed by registered or certified mail, postage prepaid, to the Borrower at the following address: [Name and Address of Borrower, Attention: Name of Authorized Officer]; and to the Trust at the following address: New Jersey Environmental Infrastructure Trust, 3131 Princeton Pike, Building 4, Suite 216, Lawrenceville, New Jersey 08648-2201, Attention: Executive Director; (b) this Note shall be binding upon the Borrower and its successors and assigns; (c) in the event any provision of this Note is held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof; (d) the obligations of the Borrower pursuant to the terms of this Note may not be assigned by the Borrower for any reason, unless the Trust shall have approved said assignment in writing; (e) this Note may not be amended, supplemented or modified without the prior written consent of the Trust; (f) this Note shall be governed by and construed in accordance with the laws of the State; (g) the Borrower shall, at the request of the Trust, execute and deliver such further instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Note; and (h) whenever the Borrower is required to obtain the determination, approval or consent of the Trust pursuant to the terms hereof, such determination, approval or consent may be either granted or withheld by the Trust in its sole and absolute discretion.

[The remainder of this page has been left blank intentionally.]



**IN WITNESS WHEREOF**, the Borrower has caused this Note to be duly executed, sealed and delivered on the date first above written.

**[NAME OF BORROWER]**

**[SEAL]**

**ATTEST:**

**By:** \_\_\_\_\_  
**Authorized Officer**

\_\_\_\_\_  
**Authorized Officer**

**TRUSTEE'S CERTIFICATE OF AUTHENTICATION**

This Note is delivered pursuant to the within-mentioned Borrower Note Resolution.

\_\_\_\_\_,  
as Trustee

By: \_\_\_\_\_  
Authorized Signatory

**EXHIBIT A-2**

**Loan Disbursements**

<b>Date of Loan Disbursement</b>	<b>Amount of Disbursement: Trust Portion</b>	<b>Amount of Disbursement: Fund Portion</b>

## RESOLUTION NO. 18 - 04

### RESOLUTION AUTHORIZING THE CONSTRUCTION LOAN FINANCING PROGRAM FOR STATE FISCAL YEAR 2019

**WHEREAS**, the New Jersey Environmental Infrastructure Trust (the "Trust"), pursuant to and in accordance with (i) the "New Jersey Environmental Infrastructure Trust Act", constituting Chapter 334 of the Pamphlet Laws of 1985 of the State (codified at N.J.S.A. 58:11B-1 *et seq.*), as the same has been, and in the future may from time to time be, amended and supplemented (the "Act"), and (ii) the regulations promulgated pursuant to the Act (N.J.A.C. 7:22-2.1 *et seq.*), as the same have been, and in the future may from time to time be, amended and supplemented (the "Regulations"), is authorized, pursuant to an interim financing program (the "Construction Financing Program"), to make loans (each, a "Construction Loan") to eligible project sponsors (each, a "Borrower") for the purpose of financing the allowable costs of environmental infrastructure projects (each, a "Project"), provided that each such Construction Loan made by the Trust satisfies the requirements of the Act, including, without limitation, N.J.S.A. 58:11B-9(d), and the Regulations, including, without limitation, N.J.A.C. 7:22-4.47; and

**WHEREAS**, pursuant to the provisions of N.J.A.C. 7:22-4.47, a proposed project sponsor is eligible to be a Borrower for a Construction Loan for purposes of financing the allowable costs of the Project of such Borrower pursuant to the Construction Financing Program, provided each of the following conditions is satisfied in full: (i) the Project is listed on the project priority lists for the ensuing fiscal year that have been submitted to the State Legislature pursuant to N.J.S.A. 58:11B-20 or N.J.S.A. 58:11B-20.1 (collectively, the "Priority List"); (ii) the proposed Borrower has submitted a complete application for the Project in accordance with N.J.A.C. 7:22-4.11; (iii) the Project (or, at a minimum, an operable segment thereof) has been certified for funding by the Trust in accordance with N.J.A.C. 7:22-4.13; (iv) the Project is in the fundable range in the forthcoming funding cycle given the Project's rank and the anticipated availability of New Jersey Department of Environmental Protection ("NJDEP") and Trust monies; and (v) the proposed Borrower has not previously received a Construction Loan through the Construction Financing Program for the same project scope (exclusive of a Loan made solely for the purpose of extending the term of a prior Construction Loan) (collectively, the "Construction Financing Program Conditions Precedent"); and

**WHEREAS**, it is the desire of the Trust, subject to the terms and provisions of the Act, the Regulations and this Resolution, to authorize the implementation of the Construction Financing Program for the State Fiscal Year 2019 ("SFY2019") Environmental Infrastructure Financing Program of the Trust (the "SFY2019 Construction Financing Program"); and

**WHEREAS**, in order to provide a source of funding for the implementation of the Construction Financing Program for SFY2019, it is anticipated that the New Jersey State Legislature and the Governor of the State will enact into law an appropriation act (the "Appropriation") that will appropriate to the Trust, from repayments of loans deposited in any account, including, without limitation, the Clean Water State Revolving Fund Accounts contained within the "Wastewater Treatment Fund", the "1992 Wastewater Treatment Fund", the "Water Supply Fund", the "Stormwater Management and Combined Sewer Overflow Abatement Fund", or the Drinking Water

State Revolving Fund, as appropriate, and from any net earnings received from the investment and reinvestment of such deposits, the sum of \$500,000,000, such sum to be deposited in the segregated fund created by the Trust for the purpose of funding the SFY2019 Construction Financing Program; and

**WHEREAS**, in addition to the funds made available to the Trust pursuant to the Appropriation for purposes of the SFY2019 Construction Financing Program, it is the desire of the Trust to provide, as additional sources of funding for the SFY2019 Construction Financing Program, (i) net earnings with respect to funds held by the Trust and (ii) operating funds of the Trust that are not required for, or committed to, the operations of the Trust for State Fiscal Years 2019 and 2020 (collectively, the “Available Trust Revenues”), which Available Trust Revenues may be made available by the Trust, up to a maximum of \$500,000 per Borrower to (i) Borrowers participating in the SFY2019 Construction Financing Program that do not qualify for funding from the Appropriation, as well as (ii) at the election of the Trust, any other Borrowers participating in the SFY2019 Construction Financing Program; and

**WHEREAS**, with respect to the SFY2019 Construction Financing Program of the Trust and other future construction financing programs of the Trust (collectively, the “Current and Future Construction Financing Programs”), it is the desire of the Trust to explore, as an additional source of funding for the Current and Future Construction Financing Programs, the procurement by the Trust of a line of credit or other similar financial instrument, either through a competitive or negotiated process, from a commercial bank (the “Credit Instrument”; the Appropriation, the Available Trust Revenues and the Credit Instrument shall be referred to collectively herein as the “Available Funds”), and in furtherance of such exploration, the Trust, through its Authorized Officers (as hereinafter defined), desires to (i) discuss and explore potential structural, collateral and credit features relating to a Credit Instrument with one or more banking corporations, having membership in the federal depository insurance corporation, and/or (ii) prepare and distribute a Request for Qualifications or a Request for Proposals, seeking proposals from qualified providers of a Credit Instrument; and

**WHEREAS**, it is the desire of the Trust that, if a Borrower is eligible to receive financing from the SFY2019 Construction Financing Program for a Project that includes multiple operable segments, the Borrower may receive a single, combined Construction Loan for such Project, provided that (i) the Borrower has submitted to the Trust and the NJDEP a complete application with respect to the Project, including each operable segment of such Project, (ii) the Trust shall not be obligated to disburse Available Funds pursuant to such Construction Loan with respect to any operable segment of a given Project until such operable segment and the Project costs applicable thereto shall have been certified by the NJDEP, and (iii) the Borrower otherwise satisfies each of the other applicable requirements the Act and the Regulations applicable thereto and the applicable terms of this Resolution.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of the New Jersey Environmental Infrastructure Trust (the “Board”), as follows:

**Section 1.** The Board hereby authorizes the establishment of the SFY2019 Construction Financing Program, provided (i) each Construction Loan made pursuant to the SFY2019 Construction Financing Program shall be funded solely from the Available Funds applicable thereto and available therefor; and (ii) each Construction Loan made pursuant to the SFY2019 Construction Financing Program, and each Project (including each operable segment thereof) funded thereby, shall comply fully with the provisions of the Act and the Regulations applicable thereto and the applicable terms of this Resolution. The Authorized Officers are each hereby severally authorized and directed, after consultation with the Professional Advisors (as hereinafter defined), to determine the particular Available Funds that shall be allocated to, and shall be the source of funding for, any given Construction Loan made pursuant to the SFY2019 Construction Financing Program.

**Section 2.** Any Construction Loan made by the Trust as part of the SFY2019 Construction Financing Program shall be evidenced by (i) a note or other appropriate obligation of the Borrower to be issued to the Trust (the "Obligation"), and (ii) any other documentation as shall be deemed necessary and appropriate by the Chairman of the Trust, the Vice Chairman of the Trust and the Executive Director of the Trust, or any other person or persons designated by the Board by resolution to act on behalf of the Trust, but in each case subject to the limitations of the by-laws of the Trust (each, an "Authorized Officer"), after consultation with Bond Counsel to the Trust and the Office of the Attorney General of the State (collectively, the "Loan Instruments"). Each Obligation shall be in substantially the applicable form attached hereto as Exhibit A, with such revisions and modifications thereto as shall be approved by an Authorized Officer after consultation with Bond Counsel to the Trust and the Office of the Attorney General of the State. The Loan Instruments shall include such terms and provisions relating to the SFY2019 Construction Financing Program as shall be determined by an Authorized Officer, after consultation with Bond Counsel to the Trust and the Office of the Attorney General of the State, as being necessary in connection with (i) the satisfaction of the requirements of the Act and the Regulations applicable thereto and (ii) the implementation of the applicable terms of this Resolution, including, with respect to, as applicable, the funding of a Project with multiple operable segments via a single Construction Loan and the proper disbursement from such Construction Loan for the funding of each Project operable segment.

Any Construction Loan made by the Trust to a Borrower as part of the SFY2019 Construction Financing Program:

(a) shall bear interest at a rate that shall be determined in accordance with the Interest Rate Calculation (as defined in Section 3 hereof);

(b) shall have a maturity date that shall be determined by an Authorized Officer, in consultation with Bond Counsel to the Trust and the Office of the Attorney General of the State, which maturity date shall be no later than the applicable date set forth in Section 4 hereof; and

(c) shall be subject to the imposition of a fee consisting of fifty percent (50%) of the NJDEP loan origination fee applicable to a given Project.

**Section 3.** The rate of interest to be paid by a Borrower to the Trust with respect to the repayment of a Construction Loan shall be calculated in the following manner (the "Interest Rate

Calculation”), so as to achieve an objectively determined rate of interest that is reflective of (i) the policy goals of the Trust as set forth in this Resolution and (ii) the market as of the respective dates on which the Construction Loan is disbursed by the Trust to the Borrower, provided, however, that the portion of the Construction Loan that shall finance the NJDEP loan origination fee that shall be payable as provided in Section 2(c) hereof may be determined by the Authorized Office, at his or her discretion, to bear interest at a rate of 0.00% as an alternative to the rate of interest that otherwise would be applicable to that portion of the Construction Loan pursuant to the provisions of this Section 3:

- (a) with respect to any portion of a Construction Loan utilizing amounts made available to the Trust pursuant to the Appropriation, 0.00%;
- (b) with respect to any portion of a Construction Loan utilizing Available Trust Revenues to a local government unit (as such term is defined in the Act), the interest rate as defined by an appropriate general obligation tax-exempt market index, as shall be selected by an Authorized Officer, which options for selection may include, without limitation, (i) the Thompson Financial TM3 “AAA” Municipal Market Data General Obligation Index (Tax Exempt) and (ii) the “BVAL” Index (relating to general obligation, tax exempt credits) of Bloomberg L.P. (or any subsidiary thereof), in any case for the number of years that corresponds to the term consisting of the period from the date of a given disbursement of proceeds of the Construction Loan to the maturity date of the Construction Loan, rounded up to the nearest year;
- (c) with respect to any portion of a Construction Loan utilizing Available Trust Revenues to a public water utility (as such term is defined in the Act), a small water company (as such term is defined in the Act), any other private person, or a local government unit on behalf of any private person, the interest rate as defined by an appropriate alternative minimum tax market index, as shall be selected by an Authorized Officer, which options for selection may include, without limitation, (i) the Thompson Financial TM3 “AAA” Municipal Market Data General Obligation Index (AMT) and (ii) the “BVAL” Index (relating to alternative minimum tax credits) of Bloomberg L.P. (or any subsidiary thereof), in any case for the number of years that corresponds to the term consisting of the period from the date of a given disbursement of proceeds of the Construction Loan to the maturity date of the Construction Loan, rounded up to the nearest year; and
- (d) with respect to any portion of a Construction Loan disbursed utilizing funds made available to the Trust pursuant to a Credit Instrument, a rate to be determined by the Trust pursuant to the approval by the Board of any such Credit Instrument as required by Section 12 hereof, which rate shall be commensurate with the cost to the Trust of obtaining funds pursuant to such Credit Instrument for the purpose of making such Construction Loan or portion thereof.

For purposes of determining the term in order to perform the Interest Rate Calculation with respect to a given disbursement of Construction Loan proceeds in connection with a given

Construction Loan, as set forth above, the Authorized Officers shall calculate such term as commencing on the date of a given disbursement and continuing to, but not including, the maturity date of such Construction Loan, rounding up to the nearest year.

**Section 4.** The maturity date with respect to any Construction Loan, including any individual funding disbursement made pursuant thereto, shall not exceed the maximum maturity that is permitted pursuant to the provisions of N.J.S.A. 58:11B-9(d), as such provisions may hereafter be amended and supplemented from time to time.

**Section 5.** The principal amount of each Construction Loan shall not exceed \$15,000,000, unless a higher principal amount thereof is authorized by official action of the Board at a future meeting thereof.

**Section 6.** The Authorized Officers are each hereby severally authorized and directed, after consultation with Bond Counsel to the Trust and the Office of the Attorney General of the State, to approve the participation of a Borrower in the SFY2019 Construction Financing Program, provided that such Borrower qualifies for such participation pursuant to the provisions of the Act and the Regulations applicable thereto and the applicable terms of this Resolution, including, without limitation, satisfaction by such Borrower with the applicable Financing Program Conditions Precedent.

**Section 7.** Prior to the making of any Construction Loan with respect to any Project pursuant to the SFY2019 Construction Financing Program, an Authorized Officer shall certify such Project for funding through the SFY2019 Construction Financing Program in accordance with the provisions of N.J.A.C. 7:22-4.13; provided, however, that (i) the proposed Project, or at least one operable segment thereof (as provided pursuant to the provisions of Section 8 hereof), previously has been certified for funding by the Commissioner of the NJDEP, and (ii) such proposed Project (including each of the operable segments thereof) shall otherwise qualify for funding through the SFY2019 Construction Financing Program pursuant to the terms and provisions of the Act and the Regulations applicable thereto and the applicable terms and provisions of this Resolution.

**Section 8.** In the event that a portion, but not all, of a Project that is to be the subject of a Construction Loan has been certified for funding by the Commissioner of the NJDEP, as well as by the Trust pursuant to the provisions of Section 7 hereof, the Authorized Officers are hereby severally authorized to extend a Construction Loan to such Borrower for such Project in a stated principal amount that may equal, but shall not exceed, the total estimated allowable costs of such Project (subject to the further limitations set forth in the Act, the applicable Regulations and this Resolution, including, without limitation, Section 5 of this Resolution); provided, however, that the Loan Instruments relating to such Construction Loan shall provide that the Trust shall not disburse to the Borrower any proceeds of such Construction Loan with respect to those costs of the Project that have not been certified by the Commissioner of the NJDEP, and such prohibition upon the disbursement by the Trust to the Borrower of such proceeds of the Construction Loan shall continue to apply until such date as such Project costs have been certified by the Commissioner of the NJDEP, as well as by the Trust pursuant to the provisions of Section 7 hereof.



**Section 9.** Each Authorized Officer is hereby severally authorized and directed to execute (i) any Loan Instrument to which the Trust is a party (the “Trust Loan Instruments”) and (ii) any certificates, instruments or documents contemplated therein or otherwise related to the participation of any Borrower in the SFY2019 Construction Financing Program.

**Section 10.** Upon execution of the Trust Loan Instruments by an Authorized Officer, the Secretary and the Assistant Secretary of the Trust are each hereby severally authorized and directed, where required, to affix the corporate seal of the Trust, and to attest to the signature of such Authorized Officer, thereon and on any certificates, instruments or documents contemplated therein or related thereto.

**Section 11.** At the meeting of the Board that is scheduled to occur during the month next succeeding the month during which execution and delivery is completed with respect to Loan Instruments relating to a Construction Loan made by the Trust to a Borrower pursuant to the SFY2019 Construction Financing Program, the Executive Director of the Trust shall provide a report to the Board concerning the details of such transaction.

**Section 12.** Each Authorized Officer is hereby severally authorized to undertake and complete the following with respect to the anticipated procurement of a Credit Instrument:

- (a) engage in discussions with one or more banking corporations, having membership in the federal depository insurance corporation, for the purpose of exploring potential structural, collateral and credit features relating to a Credit Instrument in favor of the Trust for the purpose of funding all or a portion of one or more of the Current and Future Construction Financing Programs, and include in such discussions, at the discretion of such Authorized Officer, one or more of Bond Counsel to the Trust, the Office of the Attorney General of the State, and the Financial Advisor to the Trust (collectively, the “Professional Advisors”); and/or
- (b) prepare and distribute, in consultation with the Professional Advisors, a Request for Qualifications or a Request for Proposals (in either case, the “RFP”) to banking corporations, having membership in the federal depository insurance corporation, for the establishment of a Credit Instrument in favor of the Trust for the purpose of funding all or a portion of one or more of the Current and Future Construction Financing Programs, in such amount as shall be determined by such Authorized Officer to be necessary and appropriate for such purpose. Such RFP shall be prepared and distributed pursuant to and in compliance with Trust Policy and Procedure No. 4.00, entitled “Procurement of Goods and Services”.

Notwithstanding the above terms and provisions of this Section 12:

- (c) the specific structural, collateral and credit features of the Credit Instrument that may be discussed by an Authorized Officer with one or more banking corporations, and any contractual commitment by the Trust with respect to such structural,

collateral and credit features, shall be subject to the authorization and approval thereof by the Board at a future meeting thereof; and

- (d) the award of any contract to a banking corporation that has submitted to the Trust a response to RFP for the provision of a Credit Instrument for the purpose of funding all or a portion of one or more of the Current and Future Construction Financing Programs shall be made only upon authorization by official action of the Board at a future meeting thereof.

**Section 13.** Any Authorized Officer is hereby authorized and directed to take such other actions that such Authorized Officer, in his respective sole discretion after consultation with Bond Counsel to the Trust and the Office of the Attorney General of the State, deems necessary, convenient or desirable to affect the transactions contemplated hereby.

Adopted Date: January 11, 2018

Motion Made By: Michele Putnam

Motion Seconded By: Mark Longo

Ayes: 4

Nays: 0

Abstentions: 0

**EXHIBIT A**

**FORMS OF OBLIGATION**

[NAME OF MUNICIPALITY]  
NOTE  
RELATING TO:  
THE CONSTRUCTION FINANCING TRUST LOAN PROGRAM  
OF THE NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST

\$ \_\_\_\_\_, 201\_

\_FP-18-\_\_

**FOR VALUE RECEIVED,** \_\_\_\_\_, a municipal corporation duly created and validly existing pursuant to the laws of the State (as hereinafter defined), and its successors and assigns (the "Borrower"), hereby promises to pay to the order of the **NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST**, a public body corporate and politic with corporate succession, duly created and validly existing under and by virtue of the Act (as hereinafter defined) (the "Trust"), the Principal (as hereinafter defined), together with all unpaid accrued Interest (as hereinafter defined), fees, late charges and other sums due hereunder, if any, in lawful money of the United States of America, on the Maturity Date (as hereinafter defined) or the date of any optional prepayment or acceleration in accordance with the provisions of this note (this "Note").

**SECTION 1. Definitions.** As used in this Note, unless the context requires otherwise, the following terms shall have the following meanings:

**"Act"** means the "New Jersey Environmental Infrastructure Trust Act", constituting Chapter 334 of the Pamphlet Laws of 1985 of the State (codified at N.J.S.A. 58:11B-1 *et seq.*), as the same may from time to time be amended and supplemented.

**"Administrative Fee"** means a fee of up to four-tenths of one percent (.40%) of that portion of the Principal identified in clause (i) of the definition thereof (as set forth in this Section 1), or such lesser amount, if any, as the Trust may determine from time to time.

**"Anticipated Financing Program"** means the financing program of the Trust, pursuant to which the Trust will issue its Trust Bonds for the purpose of financing, on a long term basis, the Project and other projects of certain qualifying borrowers.

**"Anticipated Long Term Loan"** means the long term loan made by the Trust to the Borrower from the proceeds of its Trust Bonds, as part of the Anticipated Financing Program.

**"Authorized Officer"** means any person authorized by the Borrower or the Trust, as the case may be, to perform any act or execute any document relating to the Loan or this Note.

**"Code"** means the Internal Revenue Code of 1986, as the same may from time to time be amended and supplemented, including any regulations promulgated thereunder, any successor code thereto and any administrative or judicial interpretations thereof.

**“Cost”** means those costs that are allocable to the Project, as shall be determined on a project-specific basis in accordance with the Regulations, as further set forth in Exhibit B hereto, (i) as such Exhibit B shall be supplemented by an Authorized Officer of the Trust by means of either a substitute Exhibit B or an additional Exhibit B, such supplement to be implemented concurrently with the supplement to Exhibit A-1 hereto (as provided in the definition of “Project” as set forth herein), and (ii) as the then-current Exhibit B may be amended by subsequent changes to eligible costs as evidenced by a certificate of an Authorized Officer of the Trust.

**“Environmental Infrastructure Facilities”** means Wastewater Treatment Facilities, Stormwater Management Facilities or Water Supply Facilities (as such terms are defined in the Regulations).

**“Environmental Infrastructure System”** means the Environmental Infrastructure Facilities of the Borrower, including the Project, for which the Borrower is receiving the Loan.

**“Event of Default”** means any occurrence or event specified in Section 6 hereof.

**“Fund Portion”** means, on any date, an amount equal to seventy-five percent (75%) of the Principal of the Loan on such date, exclusive of that portion of the Principal of the Loan that is allocable to the NJDEP Loan Origination Fee, which NJDEP Loan Origination Fee shall be financed exclusively from the Trust Portion.

**“Interest”** means the interest charged on the outstanding Principal of the Loan at a rate of (a) with respect to the Trust Portion of the Principal, the applicable Trust Portion Interest Rate and (b) with respect to the Fund Portion of the Principal, 0.00%, and payable by the Borrower to the Trust (i) on the Maturity Date or (ii) with respect to any optional prepayment or acceleration of the Loan pursuant to the terms of this Note, on the date of such optional prepayment or acceleration, as the case may be.

**“Loan”** means the loan of the Principal, made by the Trust to the Borrower to finance or refinance a portion of the Cost of the Project, as evidenced by this Note.

**“Loan Disbursement Requisition”** means the requisition, to be executed by an Authorized Officer of the Borrower and approved by the NJDEP, in a form to be determined by the Trust and the NJDEP.

**“Maturity Date”** means June 30, [2021][2022], or (i) such earlier date as shall be determined by an Authorized Officer of the Trust in his or her sole discretion, which date shall be determined by such Authorized Officer of the Trust to be the date of the closing for the Anticipated Financing Program, or (ii) such later date (subject to the then-applicable limits of the Act) to be determined by an Authorized Officer of the Trust in his or her sole discretion, pursuant to a written certification thereof, as acknowledged and approved by an Authorized Officer of the Borrower.

“**NJDEP**” means the New Jersey Department of Environmental Protection.

“**NJDEP Loan Origination Fee**” means the “NJDEP Fee” as referenced and defined in Exhibit B hereto, which NJDEP Fee is an administrative fee that is payable by the Borrower to the NJDEP as a portion of the Cost of the Project that has been incurred by the Borrower for engineering and environmental services provided to the Borrower by the NJDEP.

“**Principal**” means the principal amount of the Loan, at any time being the lesser of (i) \_\_\_\_\_ Dollars (\$\_\_\_\_\_), or (ii) the aggregate outstanding amount as shall actually be disbursed to the Borrower by the Trust pursuant to one or more Loan Disbursement Requisitions, which Principal shall be payable by the Borrower to the Trust (i) on the Maturity Date or (ii) with respect to any optional prepayment or acceleration of the Loan pursuant to the terms of this Note, on the date of such optional prepayment or acceleration, as the case may be.

“**Project**” means the Environmental Infrastructure Facilities of the Borrower which constitutes a project for which the Trust is making the Loan to the Borrower, as further described in Exhibit A-1 hereto; provided, however, that the description of the Project, as set forth in Exhibit A-1 attached hereto, shall be supplemented by means of either (i) the substitution of a revised and updated Exhibit A-1 for the current Exhibit A-1 or (ii) the inclusion of an additional Exhibit A-1, in either case, promptly following the certification for funding by the NJDEP of the remaining components of the Project, as applicable, such supplement to be undertaken by an Authorized Officer of the Trust.

“**Regulations**” means the rules and regulations, as applicable, now or hereafter promulgated pursuant to N.J.A.C. 7:22-3 *et seq.*, 7:22-4 *et seq.*, 7:22-5 *et seq.*, 7:22-6 *et seq.*, 7:22-7 *et seq.*, 7:22-8 *et seq.*, 7:22-9 *et seq.* and 7:22-10 *et seq.*, as the same may from time to time be amended and supplemented.

“**State**” means the State of New Jersey.

“**Trust Bonds**” means the revenue bonds of the Trust to be issued, as part of the Anticipated Financing Program.

“**Trust Portion**” means, on any date, an amount equal to the aggregate of (i) twenty-five percent (25%) of the Principal of the Loan on such date, exclusive of that portion of the Principal of the Loan that is allocable to the NJDEP Loan Origination Fee, plus (ii) one hundred percent (100%) of that portion of the Principal of the Loan that is allocable to the NJDEP Loan Origination Fee.

“**Trust Portion Interest Rate**” means, with respect to each disbursement of proceeds of the Trust Portion of the Loan, (a) to the extent that such disbursement is funded from moneys appropriated to the Trust, for the Construction Financing Trust Loan Program of the Trust, pursuant to an appropriations act of the State, the Trust Portion Interest Rate shall equal 0.00%, (b) to the extent that such disbursement is funded from available moneys of the Trust that are neither (i) appropriated to the Trust as provided by the preceding clause (a), nor (ii) borrowed

from a financial institution pursuant to a line of credit or other similar financial instrument as provided by the succeeding clause (c), the Trust Portion Interest Rate shall equal the interest rate that is published as either the Thompson Financial TM3 “AAA” Municipal Market Data General Obligation Index (Tax-Exempt) or the “BVAL” Index (relating to general obligation, tax exempt credits) of Bloomberg L.P. (or any subsidiary thereof), (with the particular index that is used by the Trust to be selected by an Authorized Officer of the Trust) or, if such indexes are no longer published on such date, such successor index as may be selected by an Authorized Officer of the Trust, in each case for the number of years that corresponds to the length of time from the date such disbursement is made available to the Borrower by the Trust to the Maturity Date, rounding up to the nearest year, or (c) to the extent that such disbursement is funded from available moneys of the Trust borrowed from a financial institution pursuant to a line of credit or other similar financial instrument, the Trust Portion Interest Rate shall equal the actual rate of interest established by the applicable financial institution pursuant to a competitive or negotiated solicitation by the Trust with respect to such line of credit or other financial instrument.

**SECTION 2. Representations of the Borrower.** The Borrower represents and warrants to the Trust:

(a) Organization. The Borrower: (i) is a municipal corporation duly created and validly existing under and pursuant to the Constitution and laws of the State; (ii) has full legal right and authority to execute, attest and deliver this Note, to sell this Note to the Trust, and to perform its obligations hereunder, and (iii) has duly authorized, approved and consented to all necessary action to be taken by the Borrower for: (A) the issuance of this Note, the sale thereof to the Trust and the due performance of its obligations hereunder and (B) the execution, delivery and due performance of all certificates and other instruments that may be required to be executed, delivered and performed by the Borrower in order to carry out and give effect to this Note.

(b) Authority. This Note has been duly authorized by the Borrower and duly executed, attested and delivered by Authorized Officers of the Borrower. This Note has been duly sold by the Borrower to the Trust and duly issued by the Borrower and constitutes a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms, except as the enforcement thereof may be affected by bankruptcy, insolvency or other laws or the application by a court of legal or equitable principles affecting creditors’ rights.

(c) Pending Litigation. There are no proceedings pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower that, if adversely determined, would adversely affect (i) the condition (financial or otherwise) of the Borrower, (ii) the ability of the Borrower to satisfy all of its Loan repayment obligations hereunder, (iii) the authorization, execution, attestation or delivery of this Note, (iv) the issuance of this Note and the sale thereof to the Trust, and (v) the Borrower’s ability otherwise to observe and perform its duties, covenants, obligations and agreements under this Note.

(d) Compliance with Existing Laws and Agreements; Governmental Consent. (i) The due authorization, execution, attestation and delivery of this Note by the Borrower and the sale of this Note to the Trust, (ii) the observation and performance by the Borrower of its duties,

covenants, obligations and agreements hereunder, including, without limitation, the repayment of the Loan and all other amounts due hereunder, and (iii) the undertaking and completion of the Project, will not (A) other than the lien, charge or encumbrance created by this Note and by any other outstanding debt obligations of the Borrower that are at parity with this Note as to lien on, and source and security for payment thereon from, the general tax revenues of the Borrower, result in the creation or imposition of any lien, charge or encumbrance upon any properties or assets of the Borrower pursuant to, (B) result in any breach of any of the terms, conditions or provisions of, or (C) constitute a default under, any existing ordinance or resolution, outstanding debt or lease obligation, trust agreement, indenture, mortgage, deed of trust, loan agreement or other instrument to which the Borrower is a party or by which the Borrower, its Environmental Infrastructure System or any of its properties or assets may be bound, nor will such action result in any violation of the provisions of the charter or other document pursuant to which the Borrower was established or any laws, ordinances, injunctions, judgments, decrees, rules, regulations or existing orders of any court or governmental or administrative agency, authority or person to which the Borrower, its Environmental Infrastructure System or its properties or operations are subject. The Borrower has obtained all permits and approvals required to date by any governmental body or officer for the authorization, execution, attestation and delivery of this Note, for the sale of this Note to the Trust, for the making, observance and performance by the Borrower of its duties, covenants, obligations and agreements under this Note, and for the undertaking and completion of the Project.

(e) Reliance. The Borrower hereby acknowledges that the Trust is making the Loan to the Borrower pursuant to the terms hereof in reliance upon each of the representations of the Borrower set forth in this Section 2.

### **SECTION 3. Covenants of the Borrower.**

(a) Participation in the Anticipated Financing Program. The Borrower covenants and agrees that it shall undertake and complete in a timely manner all conditions precedent identified by the Trust relating to (i) the participation by the Borrower in the Anticipated Financing Program and (ii) the qualification by the Borrower for receipt of the Anticipated Long Term Loan.

(b) Full Faith and Credit Pledge. To secure the repayment obligation of the Borrower with respect to this Note, and all other amounts due under this Note, the Borrower unconditionally and irrevocably pledges its full faith and credit and covenants to exercise its unlimited taxing powers for the punctual payment of any and all obligations and amounts due under this Note. The Borrower acknowledges that, to assure the continued operation and solvency of the Trust, the Trust may, pursuant to and in accordance with Section 12a of the Act, require that if the Borrower fails or is unable to pay promptly to the Trust in full any Loan repayments, any Interest or any other amounts due pursuant to this Note, an amount sufficient to satisfy such deficiency shall be paid by the State Treasurer to the Trust from State-aid otherwise payable to the Borrower.

(c) Disposition of Environmental Infrastructure System. The Borrower covenants and agrees that it shall not sell, lease, abandon or otherwise dispose of all or substantially all of



its Environmental Infrastructure System without the express written consent of the Trust, which consent may or may not be granted by the Trust in its sole discretion.

(d) Financing With Tax-Exempt Bonds. The Borrower acknowledges, covenants and agrees that it is the intention of the Borrower to finance the Project on a long term basis with proceeds of Trust Bonds now or hereinafter issued, the interest on which is excluded from gross income for purposes of federal income taxation pursuant to Section 103(a) of the Code (“tax-exempt bonds”). In furtherance of such long term financing with tax-exempt bonds, the Borrower covenants that, except to the extent expressly permitted in writing by the Trust, the Borrower will not take any action or permit any action to be taken which would result in any of the proceeds of the Loan being used (directly or indirectly) (i) in any “private business use” within the meaning of Section 141(b)(6) of the Code, (ii) to make or finance loans to persons other than the Borrower, or (iii) to acquire any “nongovernmental output property” within the meaning of Section 141(d)(2) of the Code. In addition, the Borrower covenants and agrees that no portion of the Project will be investment property, within the meaning of Section 148(b) of the Code. The Borrower covenants and agrees that any Costs of the Borrower’s Project to be paid or reimbursed with proceeds of the Loan will result in the expenditure of proceeds under Treasury Regulations §1.148-6(d) and Treasury Regulations §1.150-2.

(e) Operation and Maintenance of Environmental Infrastructure System. The Borrower covenants and agrees that it shall maintain its Environmental Infrastructure System in good repair, working order and operating condition, and make all necessary and proper repairs and improvements with respect thereto.

(f) Records and Accounts; Inspections. The Borrower covenants and agrees that it shall keep accurate records and accounts for its Environmental Infrastructure System (the “System Records”), separate and distinct from its other records and accounts (the “General Records”), which shall be audited annually by an independent registered municipal accountant and shall be made available for inspection by the Trust upon prior written notice. The Borrower shall permit the Trust to inspect the Environmental Infrastructure System.

(g) Insurance. The Borrower covenants and agrees that it shall maintain insurance policies providing against risk of direct physical loss, damage or destruction of its Environmental Infrastructure System, in an amount that will satisfy all applicable regulatory requirements. The Borrower covenants and agrees that it shall include, or cause to be included, the Trust as an additional “named insured” on any certificate of liability insurance procured by the Borrower and by any contractor or subcontractor for the Project.

(h) Reliance. The Borrower hereby acknowledges that the Trust is making the Loan to the Borrower pursuant to the terms hereof in reliance upon each of the covenants of the Borrower set forth in this Section 3.

**SECTION 4. Disbursement of the Loan Proceeds; Amounts Payable; Prepayment; and Late Fee.** The Trust shall effectuate the Loan to the Borrower by making one or more disbursements to the Borrower promptly after receipt by the Trust of a Loan Disbursement Requisition, and the approval of such Loan Disbursement Requisition by an Authorized Officer

of the Trust or designee thereof, each such disbursement and the date thereof to be recorded by an Authorized Officer of the Trust on the table attached as Exhibit A-2 hereto; provided, however, that no Loan Disbursement Requisition shall be approved by the Trust for disbursement unless and until the portion of the Project to which such Loan Disbursement Requisition relates has been certified for funding by the NJDEP. It is expected that the proceeds of the Loan will be disbursed to the Borrower in accordance with Exhibit C hereto, as Exhibit C shall be supplemented by an Authorized Officer of the Trust by means of either a substitute Exhibit C or an additional Exhibit C, such supplement to be implemented concurrently with the supplement to Exhibit A-1 hereto (as provided in the definition of "Project" as set forth herein). The latest date upon which the Borrower may submit to the Trust a Loan Disbursement Requisition is the business day immediately preceding the date fixed by the Trust for the sale of its bonds in connection with the Anticipated Financing Program, or such alternative date as shall be identified by the Trust for the Borrower in writing. On the Maturity Date, the Borrower shall repay the Loan to the Trust in an amount equal to: (i) the Principal; (ii) the Interest; (iii) the Administrative Fee, if any; and (iv) any other amounts due and owing pursuant to the provisions of this Note. The Borrower may prepay the Loan obligations hereunder, in whole or in part, upon receipt of the prior written consent of an Authorized Officer of the Trust. Each payment made to the Trust shall be applied to the payment of, first, the Interest then due and payable, second, the Principal, third, the Administrative Fee, if any, fourth, any late charges, and, finally, any other amount due pursuant to the provisions of this Note. In the event that the repayment obligation set forth in this Note is received by the Trust later than the Maturity Date, a late fee shall be payable to the Trust in an amount equal to the greater of twelve percent (12%) per annum or the prime rate as published in the Wall Street Journal on the Maturity Date plus one half of one percent per annum on such late payment from the Maturity Date to the date it is actually paid; provided, however, that any late payment charges incurred hereunder shall not exceed the maximum interest rate permitted by law. Notwithstanding the provisions of this Section 4 to the contrary, the Borrower hereby acknowledges and agrees that, on the date of issuance of this Note, a disbursement shall be made and shall be recorded by an Authorized Officer of the Trust on the table attached as Exhibit A-2 hereto in the amount recorded thereon. Such disbursement shall be made for the purpose of funding fifty percent (50%) of the NJDEP Loan Origination Fee. Such disbursement shall be paid by the Trust on behalf of the Borrower directly to the NJDEP in satisfaction of the provisions hereof.

Notwithstanding the provisions of this Note to the contrary with respect to the funding, pursuant to this Section 4, of any Loan Disbursement Requisition relating to all or any portion of the Project: (i) the Borrower hereby acknowledges and agrees that the Trust shall not, and shall not be required to, commit funds, pursuant to the Construction Financing Trust Loan Program of the Trust, to any portion of the Project until such time as the particular portion of the Project in question has been certified for funding by the NJDEP; (ii) no Loan Disbursement Requisition shall be approved by the Trust for disbursement pursuant to this Section 4 unless and until the portion of the Project to which such Loan Disbursement Requisition relates has been certified for funding by the NJDEP; and (iii) the Trust has no obligation pursuant to this Note to make all or any portion of any disbursement pursuant to the provisions of this Section 4 if the Borrower lacks the authority to pay interest on this Note in an amount equal to the Trust Portion Interest Rate.

**SECTION 5. Unconditional Obligations.** The direct, general obligation of the Borrower to make the Loan repayments and all other payments required hereunder and the obligation to perform and observe the other duties, covenants, obligations and agreements on its part contained herein shall be absolute and unconditional, and shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner whatsoever while any Loan repayments, or any other payments due hereunder, remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project or Environmental Infrastructure System, commercial frustration of the purpose, any change in the laws of the United States of America or of the State or any political subdivision of either or in the rules or regulations of any governmental authority, any failure of the Trust to perform and observe any agreement or any duty, liability or obligation arising out of this Note, or any rights of set-off, recoupment, abatement or counterclaim that the Borrower might have against the Trust or any other party; provided, however, that payments hereunder shall not constitute a waiver of any such rights.

**SECTION 6. Events of Default.** The following events shall constitute an “Event of Default” hereunder: (i) failure by the Borrower to pay, when due, any and all of its Loan repayment obligations hereunder, and any other payment obligations due hereunder; (ii) failure by the Borrower to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed pursuant to the terms of this Note; (iii) any representation made by the Borrower contained in this Note or in any instrument furnished in compliance with or with reference to this Note is false or misleading in any material respect; and (iv) a petition is filed by or against the Borrower under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Note or thereafter enacted, unless in the case of any such petition filed against the Borrower such petition shall be dismissed within thirty (30) days after such filing and such dismissal shall be final and not subject to appeal, or the Borrower shall become insolvent or bankrupt or shall make an assignment for the benefit of its creditors, or a custodian of the Borrower or any of its property shall be appointed by court order or take possession of the Borrower or its property or assets if such order remains in effect or such possession continues for more than thirty (30) days.

**SECTION 7. Remedies upon Event of Default.** Whenever an Event of Default shall have occurred and be continuing pursuant to the terms hereof, the Borrower hereby acknowledges and agrees to the rights of the Trust to take any action permitted or required at law or in equity to collect the amounts then due and thereafter to become due hereunder or to enforce the observance and performance of any duty, covenant, obligation or agreement of the Borrower hereunder. If an Event of Default shall have occurred, the Borrower hereby acknowledges and agrees that the Trust shall have the right to declare all Loan repayments and all other amounts due hereunder to be due and payable immediately without further notice or demand. The Borrower hereby acknowledges and agrees that no remedy herein is intended to be exclusive, and every remedy shall be cumulative and in addition to every other remedy given under this Note or now or hereafter existing at law or in equity. The Borrower hereby further acknowledges and agrees that no delay or omission by the Trust to exercise any remedy or right accruing upon any Event of Default shall impair any such remedy or right or shall be construed

to be a waiver thereof, but any such remedy or right may be exercised as often as may be deemed expedient. The Borrower hereby agrees that upon demand it shall pay to the Trust the reasonable fees and expenses of attorneys and other reasonable expenses (including, without limitation, the reasonably allocated costs of in-house counsel and legal staff) incurred in the collection of Loan repayments or any sum due hereunder or in the enforcement of the observation or performance of any obligations or agreements of the Borrower upon an Event of Default. Any moneys collected by the Trust pursuant to this Section 7 shall be applied first to pay any attorneys' fees or other fees and expenses owed by the Borrower.

**SECTION 8. Certain Miscellaneous Provisions.** The Borrower hereby acknowledges and agrees as follows: (a) all notices hereunder shall be deemed given when hand delivered or when mailed by registered or certified mail, postage prepaid, to the Borrower at the following address: [Name and Address of Borrower, Attention: Name of Authorized Officer]; and to the Trust at the following address: New Jersey Environmental Infrastructure Trust, 3131 Princeton Pike, Building 4, Suite 216, Lawrenceville, New Jersey 08648-2201, Attention: Executive Director; (b) this Note shall be binding upon the Borrower and its successors and assigns; (c) in the event any provision of this Note is held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof; (d) the obligations of the Borrower pursuant to the terms of this Note may not be assigned by the Borrower for any reason, unless the Trust shall have approved said assignment in writing; (e) this Note may not be amended, supplemented or modified without the prior written consent of the Trust; (f) this Note shall be governed by and construed in accordance with the laws of the State; (g) the Borrower shall, at the request of the Trust, execute and deliver such further instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Note; and (h) whenever the Borrower is required to obtain the determination, approval or consent of the Trust pursuant to the terms hereof, such determination, approval or consent may be either granted or withheld by the Trust in its sole and absolute discretion.

[The remainder of this page has been left blank intentionally.]

**IN WITNESS WHEREOF**, the Borrower has caused this Note to be duly executed, sealed and delivered on the date first above written.

**[NAME OF BORROWER]**

**[SEAL]**

**ATTEST:**

**By:** \_\_\_\_\_  
**Mayor**

\_\_\_\_\_  
**Clerk**

**By:** \_\_\_\_\_  
**Chief Financial Officer**



**[NAME OF AUTHORITY]**  
**NOTE**  
**RELATING TO:**  
**THE CONSTRUCTION FINANCING TRUST LOAN PROGRAM**  
**OF THE NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST**

\$ \_\_\_\_\_, 201\_  
FP-18-\_\_\_\_\_

**FOR VALUE RECEIVED,** \_\_\_\_\_, a [municipal] [county] [utilities] [sewerage] authority, acting as a public body corporate and politic with corporate succession duly created and validly existing pursuant to the laws of the State (as hereinafter defined), including, without limitation, the Borrower Enabling Act (as hereinafter defined), and its successors and assigns (the "Borrower"), hereby promises to pay to the order of the **NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST**, a public body corporate and politic with corporate succession, duly created and validly existing under and by virtue of the Act (as hereinafter defined) (the "Trust"), the Principal (as hereinafter defined), together with all unpaid accrued Interest (as hereinafter defined), fees, late charges and other sums due hereunder, if any, in lawful money of the United States of America, on the Maturity Date (as hereinafter defined) or the date of any optional prepayment or acceleration in accordance with the provisions of this note (this "Note").

**SECTION 1. Definitions.** As used in this Note, unless the context requires otherwise, the following terms shall have the following meanings:

**"Act"** means the "New Jersey Environmental Infrastructure Trust Act", constituting Chapter 334 of the Pamphlet Laws of 1985 of the State (codified at N.J.S.A. 58:11B-1 *et seq.*), as the same may from time to time be amended and supplemented.

**"Administrative Fee"** means a fee of up to four-tenths of one percent (.40%) of that portion of the Principal identified in clause (i) of the definition thereof (as set forth in this Section 1), or such lesser amount, if any, as the Trust may determine from time to time.

**"Anticipated Financing Program"** means the financing program of the Trust, pursuant to which the Trust will issue its Trust Bonds for the purpose of financing, on a long term basis, the Project and other projects of certain qualifying borrowers.

**"Anticipated Long Term Loan"** means the long term loan made by the Trust to the Borrower from the proceeds of its Trust Bonds, as part of the Anticipated Financing Program.

**"Authorized Officer"** means any person authorized by the Borrower or the Trust, as the case may be, to perform any act or execute any document relating to the Loan or this Note.

**"Borrower Note Resolution"** means the [resolution][indenture] of the Borrower entitled "[\_\_\_\_\_]", adopted on [\_\_\_\_\_], as amended and supplemented from time to time, pursuant to which this Note has been issued.

**“Borrower Enabling Act”** means the [“Sewerage Authorities Law”, constituting Chapter 138 of the Pamphlet Laws of 1946 of the State (codified at N.J.S.A. 40:14A-1 *et seq.*), as the same may from time to time be amended and supplemented] [the “Municipal and County Utilities Authorities Law”, constituting Chapter 183 of the Pamphlet Laws of 1957 of the State (codified at N.J.S.A. 40:14B-1 *et seq.*), as the same may from time to time be amended and supplemented].

**“Code”** means the Internal Revenue Code of 1986, as the same may from time to time be amended and supplemented, including any regulations promulgated thereunder, any successor code thereto and any administrative or judicial interpretations thereof.

**“Cost”** means those costs that are allocable to the Project, as shall be determined on a project-specific basis in accordance with the Regulations, as further set forth in Exhibit B hereto, (i) as such Exhibit B shall be supplemented by an Authorized Officer of the Trust by means of either a substitute Exhibit B or an additional Exhibit B, such supplement to be implemented concurrently with the supplement to Exhibit A-1 hereto (as provided in the definition of “Project” as set forth herein), and (ii) as the then-current Exhibit B may be amended by subsequent changes to eligible costs as evidenced by a certificate of an Authorized Officer of the Trust.

**“Environmental Infrastructure Facilities”** means Wastewater Treatment Facilities, Stormwater Management Facilities or Water Supply Facilities (as such terms are defined in the Regulations).

**“Environmental Infrastructure System”** means the Environmental Infrastructure Facilities of the Borrower, including the Project, for which the Borrower is receiving the Loan.

**“Event of Default”** means any occurrence or event specified in Section 6 hereof.

**“Fund Portion”** means, on any date, an amount equal to seventy-five percent (75%) of the Principal of the Loan on such date, exclusive of that portion of the Principal of the Loan that is allocable to the NJDEP Loan Origination Fee, which NJDEP Loan Origination Fee shall be financed exclusively from the Trust Portion.

**“Interest”** means the interest charged on the outstanding Principal of the Loan at a rate of (a) with respect to the Trust Portion of the Principal, the applicable Trust Portion Interest Rate and (b) with respect to the Fund Portion of the Principal, 0.00%, and payable by the Borrower to the Trust (i) on the Maturity Date or (ii) with respect to any optional prepayment or acceleration of the Loan pursuant to the terms of this Note, on the date of such optional prepayment or acceleration, as the case may be.

**“Loan”** means the loan of the Principal, made by the Trust to the Borrower to finance or refinance a portion of the Cost of the Project, as evidenced by this Note.



**“Loan Disbursement Requisition”** means the requisition, to be executed by an Authorized Officer of the Borrower and approved by the NJDEP, in a form to be determined by the Trust and the NJDEP.

**“Local Authorities Fiscal Control Law”** means the “Local Authorities Fiscal Control Law”, constituting Chapter 313 of the Pamphlet Laws of 1983 of the State (codified at N.J.S.A. 40A:5A-1 *et seq.*), as the same may from time to time be amended and supplemented.

**“Maturity Date”** means June 30, [2021][2022], or (i) such earlier date as shall be determined by an Authorized Officer of the Trust in his or her sole discretion, which date shall be determined by such Authorized Officer of the Trust to be the date of the closing for the Anticipated Financing Program, or (ii) such later date (subject to the then-applicable limits of the Act) to be determined by an Authorized Officer of the Trust in his or her sole discretion, pursuant to a written certification thereof, as acknowledged and approved by an Authorized Officer of the Borrower.

**“NJDEP”** means the New Jersey Department of Environmental Protection.

**“NJDEP Loan Origination Fee”** means the “NJDEP Fee” as referenced and defined in Exhibit B hereto, which NJDEP Fee is an administrative fee that is payable by the Borrower to the NJDEP as a portion of the Cost of the Project that has been incurred by the Borrower for engineering and environmental services provided to the Borrower by the NJDEP.

**“Principal”** means the principal amount of the Loan, at any time being the lesser of (i) \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), or (ii) the aggregate outstanding amount as shall actually be disbursed to the Borrower by the Trust pursuant to one or more Loan Disbursement Requisitions, which Principal shall be payable by the Borrower to the Trust (i) on the Maturity Date or (ii) with respect to any optional prepayment or acceleration of the Loan pursuant to the terms of this Note, on the date of such optional prepayment or acceleration, as the case may be.

**“Project”** means the Environmental Infrastructure Facilities of the Borrower which constitutes a project for which the Trust is making the Loan to the Borrower, as further described in Exhibit A-1 hereto; provided, however, that the description of the Project, as set forth in Exhibit A-1 attached hereto, shall be supplemented by means of either (i) the substitution of a revised and updated Exhibit A-1 for the current Exhibit A-1 or (ii) the inclusion of an additional Exhibit A-1, in either case, promptly following the certification for funding by the NJDEP of the remaining components of the Project, as applicable, such supplement to be undertaken by an Authorized Officer of the Trust.

**“Regulations”** means the rules and regulations, as applicable, now or hereafter promulgated pursuant to N.J.A.C. 7:22-3 *et seq.*, 7:22-4 *et seq.*, 7:22-5 *et seq.*, 7:22-6 *et seq.*, 7:22-7 *et seq.*, 7:22-8 *et seq.*, 7:22-9 *et seq.* and 7:22-10 *et seq.*, as the same may from time to time be amended and supplemented.

“**Revenues**” means “[\_\_\_\_\_] Revenues” as defined in the Borrower Note Resolution.

“**State**” means the State of New Jersey.

“**Trust Bonds**” means the revenue bonds of the Trust to be issued, as part of the Anticipated Financing Program.

“**Trust Portion**” means, on any date, an amount equal to the aggregate of (i) twenty-five percent (25%) of the Principal of the Loan on such date, exclusive of that portion of the Principal of the Loan that is allocable to the NJDEP Loan Origination Fee, plus (ii) one hundred percent (100%) of that portion of the Principal of the Loan that is allocable to the NJDEP Loan Origination Fee.

“**Trust Portion Interest Rate**” means, with respect to each disbursement of proceeds of the Trust Portion of the Loan, (a) to the extent that such disbursement is funded from moneys appropriated to the Trust, for the Construction Financing Trust Loan Program of the Trust, pursuant to an appropriations act of the State, the Trust Portion Interest Rate shall equal 0.00%, (b) to the extent that such disbursement is funded from available moneys of the Trust that are neither (i) appropriated to the Trust as provided by the preceding clause (a), nor (ii) borrowed from a financial institution pursuant to a line of credit or other similar financial instrument as provided by the succeeding clause (c), the Trust Portion Interest Rate shall equal the interest rate that is published as either the Thompson Financial TM3 “AAA” Municipal Market Data General Obligation Index (Tax-Exempt) or the “BVAL” Index (relating to general obligation, tax exempt credits) of Bloomberg L.P. (or any subsidiary thereof), (with the particular index that is used by the Trust to be selected by an Authorized Officer of the Trust) or, if such indexes are no longer published on such date, such successor index as may be selected by an Authorized Officer of the Trust, in each case for the number of years that corresponds to the length of time from the date such disbursement is made available to the Borrower by the Trust to the Maturity Date, rounding up to the nearest year, or (c) to the extent that such disbursement is funded from available moneys of the Trust borrowed from a financial institution pursuant to a line of credit or other similar financial instrument, the Trust Portion Interest Rate shall equal the actual rate of interest established by the applicable financial institution pursuant to a competitive or negotiated solicitation by the Trust with respect to such line of credit or other financial instrument.

**SECTION 2. Representations of the Borrower.** The Borrower represents and warrants to the Trust:

(a) Organization. The Borrower: (i) is a [municipal][county] [utilities][sewerage] authority, acting as a public body corporate and politic with corporate succession, duly created and validly existing under and pursuant to the Constitution and laws of the State, including, without limitation, the Borrower Enabling Act, and is subject to the Local Authorities Fiscal Control Law; (ii) has full legal right and authority to execute, attest and deliver this Note, to authorize the authentication of this Note, to sell this Note to the Trust, and to perform its obligations hereunder, and (iii) has duly authorized, approved and consented to all necessary

action to be taken by the Borrower for: (A) the issuance of this Note, the authentication of this Note, the sale thereof to the Trust and the due performance of its obligations hereunder and (B) the execution, delivery and due performance of all certificates and other instruments that may be required to be executed, delivered and performed by the Borrower in order to carry out and give effect to this Note.

(b) Authority. This Note has been duly authorized by the Borrower, duly executed, attested and delivered by Authorized Officers of the Borrower, and duly authenticated by the trustee or the paying agent pursuant to the Borrower Note Resolution. This Note has been duly sold by the Borrower to the Trust and duly issued by the Borrower and constitutes a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms, except as the enforcement thereof may be affected by bankruptcy, insolvency or other laws or the application by a court of legal or equitable principles affecting creditors' rights.

(c) Pending Litigation. There are no proceedings pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower that, if adversely determined, would adversely affect (i) the condition (financial or otherwise) of the Borrower, (ii) the adoption of the Borrower Note Resolution, (iii) the ability of the Borrower to satisfy all of its Loan repayment obligations hereunder, (iv) the authorization, execution, attestation, authentication or delivery of this Note, (v) the issuance of this Note and the sale thereof to the Trust, and (vi) the Borrower's ability otherwise to observe and perform its duties, covenants, obligations and agreements under this Note.

(d) Compliance with Existing Laws and Agreements; Governmental Consent. (i) The authorization, execution, attestation and delivery of this Note by the Borrower, (ii) the authentication of this Note by the trustee or paying agent pursuant to the Borrower Note Resolution, (iii) the adoption of the Borrower Note Resolution, (iv) the sale of this Note to the Trust, (v) the observation and performance by the Borrower of its duties, covenants, obligations and agreements hereunder, including, without limitation, the repayment of the Loan and all other amounts due hereunder, and (vi) the undertaking and completion of the Project, will not (A) other than the lien, charge or encumbrance created by this Note and by any other outstanding debt obligations of the Borrower that are at parity with this Note as to lien on, and source and security for payment thereon from, the Revenues of the Borrower's Environmental Infrastructure System, result in the creation or imposition of any lien, charge or encumbrance upon any properties or assets of the Borrower pursuant to, (B) result in any breach of any of the terms, conditions or provisions of, or (C) constitute a default under, any existing ordinance or resolution, outstanding debt or lease obligation, trust agreement, indenture, mortgage, deed of trust, loan agreement or other instrument to which the Borrower is a party or by which the Borrower, its Environmental Infrastructure System or any of its properties or assets may be bound, nor will such action result in any violation of the provisions of the charter or other document pursuant to which the Borrower was established or any laws, ordinances, injunctions, judgments, decrees, rules, regulations or existing orders of any court or governmental or administrative agency, authority or person to which the Borrower, its Environmental Infrastructure System or its properties or operations are subject. The Borrower has obtained all permits and approvals required to date by any governmental body or officer for the authorization,

execution, attestation, authentication and delivery of this Note, for the sale of this Note to the Trust, for the making, observance and performance by the Borrower of its duties, covenants, obligations and agreements under this Note, and for the undertaking and completion of the Project.

(e) Reliance. The Borrower hereby acknowledges that the Trust is making the Loan to the Borrower pursuant to the terms hereof in reliance upon each of the representations of the Borrower set forth in this Section 2.

### **SECTION 3. Covenants of the Borrower.**

(a) Participation in the Anticipated Financing Program. The Borrower covenants and agrees that it shall undertake and complete in a timely manner all conditions precedent identified by the Trust relating to (i) the participation by the Borrower in the Anticipated Financing Program and (ii) the qualification by the Borrower for receipt of the Anticipated Long Term Loan.

(b) Full Faith and Credit Pledge. The Borrower irrevocably pledges the Revenues in accordance with the terms of, and to the extent provided in, the Borrower Note Resolution, for the punctual payment of any and all obligations and amounts due under this Note. The Borrower acknowledges that, to assure the continued operation and solvency of the Trust, the Trust may, pursuant to and in accordance with Section 12a of the Act, require that if the Borrower fails or is unable to pay promptly to the Trust in full any Loan repayments, any Interest or any other amounts due pursuant to this Note, an amount sufficient to satisfy such deficiency shall be paid by the State Treasurer to the Trust from State-aid otherwise payable to any municipality or county to which the Borrower provides services pursuant to a contractual arrangement.

(c) Disposition of Environmental Infrastructure System. The Borrower covenants and agrees that it shall not sell, lease, abandon or otherwise dispose of all or substantially all of its Environmental Infrastructure System without the express written consent of the Trust, which consent may or may not be granted by the Trust in its sole discretion.

(d) Financing With Tax-Exempt Bonds. The Borrower acknowledges, covenants and agrees that it is the intention of the Borrower to finance the Project on a long term basis with proceeds of Trust Bonds now or hereinafter issued, the interest on which is excluded from gross income for purposes of federal income taxation pursuant to Section 103(a) of the Code (“tax-exempt bonds”). In furtherance of such long term financing with tax-exempt bonds, the Borrower covenants that, except to the extent expressly permitted in writing by the Trust, the Borrower will not take any action or permit any action to be taken which would result in any of the proceeds of the Loan being used (directly or indirectly) (i) in any “private business use” within the meaning of Section 141(b)(6) of the Code, (ii) to make or finance loans to persons other than the Borrower, or (iii) to acquire any “nongovernmental output property” within the meaning of Section 141(d)(2) of the Code. In addition, the Borrower covenants and agrees that no portion of the Project will be investment property, within the meaning of Section 148(b) of the Code. The Borrower covenants and agrees that any Costs of the Borrower’s Project to be

paid or reimbursed with proceeds of the Loan will result in the expenditure of proceeds under Treasury Regulations §1.148-6(d) and Treasury Regulations §1.150-2.

(e) Operation and Maintenance of Environmental Infrastructure System. The Borrower covenants and agrees that it shall maintain its Environmental Infrastructure System in good repair, working order and operating condition, and make all necessary and proper repairs and improvements with respect thereto.

(f) Records and Accounts; Inspections. The Borrower covenants and agrees that it shall keep accurate records and accounts for its Environmental Infrastructure System, separate and distinct from its other records and accounts, which shall be audited annually by an independent registered municipal accountant and shall be made available for inspection by the Trust upon prior written notice. The Borrower shall permit the Trust to inspect the Environmental Infrastructure System.

(g) Insurance. The Borrower covenants and agrees that it shall maintain insurance policies providing against risk of direct physical loss, damage or destruction of its Environmental Infrastructure System, in an amount that will satisfy all applicable regulatory requirements. The Borrower covenants and agrees that it shall include, or cause to be included, the Trust as an additional “named insured” on any certificate of liability insurance procured by the Borrower and by any contractor or subcontractor for the Project.

(h) Reliance. The Borrower hereby acknowledges that the Trust is making the Loan to the Borrower pursuant to the terms hereof in reliance upon each of the covenants of the Borrower set forth in this Section 3.

**SECTION 4. Disbursement of the Loan Proceeds; Amounts Payable; Prepayment; and Late Fee.** The Trust shall effectuate the Loan to the Borrower by making one or more disbursements to the Borrower promptly after receipt by the Trust of a Loan Disbursement Requisition and the approval of such Loan Disbursement Requisition by an Authorized Officer of the Trust or designee thereof, each such disbursement and the date thereof to be recorded by an Authorized Officer of the Trust on the table attached as Exhibit A-2 hereto; provided, however, that no Loan Disbursement Requisition shall be approved by the Trust for disbursement unless and until the portion of the Project to which such Loan Disbursement Requisition relates has been certified for funding by the NJDEP. It is expected that the proceeds of the Loan will be disbursed to the Borrower in accordance with Exhibit C hereto, as Exhibit C shall be supplemented by an Authorized Officer of the Trust by means of either a substitute Exhibit C or an additional Exhibit C, such supplement to be implemented concurrently with the supplement to Exhibit A-1 hereto (as provided in the definition of “Project” as set forth herein). The latest date upon which the Borrower may submit to the Trust a Loan Disbursement Requisition is the business day immediately preceding the date fixed by the Trust for the sale of its bonds in connection with the Anticipated Financing Program, or such alternative date as shall be identified by the Trust for the Borrower in writing. On the Maturity Date, the Borrower shall repay the Loan to the Trust in an amount equal to: (i) the Principal; (ii) the Interest; (iii) the Administrative Fee, if any; and (iv) any other amounts due and owing pursuant to the provisions

of this Note. The Borrower may prepay the Loan obligations hereunder, in whole or in part, upon receipt of the prior written consent of an Authorized Officer of the Trust. Each payment made to the Trust shall be applied to the payment of, first, the Interest then due and payable, second, the Principal, third, the Administrative Fee, if any, fourth, any late charges, and, finally, any other amount due pursuant to the provisions of this Note. In the event that the repayment obligation set forth in this Note is received by the Trust later than the Maturity Date, a late fee shall be payable to the Trust in an amount equal to the greater of twelve percent (12%) per annum or the prime rate as published in the Wall Street Journal on the Maturity Date plus one half of one percent per annum on such late payment from the Maturity Date to the date it is actually paid; provided, however, that any late payment charges incurred hereunder shall not exceed the maximum interest rate permitted by law. Notwithstanding the provisions of this Section 4 to the contrary, the Borrower hereby acknowledges and agrees that, on the date of issuance of this Note, a disbursement shall be made and shall be recorded by an Authorized Officer of the Trust on the table attached as Exhibit A-2 hereto in the amount recorded thereon. Such disbursement shall be made for the purpose of funding fifty percent (50%) of the NJDEP Loan Origination Fee. Such disbursement shall be paid by the Trust on behalf of the Borrower directly to the NJDEP in satisfaction of the provisions hereof.

Notwithstanding the provisions of this Note to the contrary with respect to the funding, pursuant to this Section 4, of any Loan Disbursement Requisition relating to all or any portion of the Project: (i) the Borrower hereby acknowledges and agrees that the Trust shall not, and shall not be required to, commit funds, pursuant to the Construction Financing Trust Loan Program of the Trust, to any portion of the Project until such time as the particular portion of the Project in question has been certified for funding by the NJDEP; (ii) no Loan Disbursement Requisition shall be approved by the Trust for disbursement pursuant to this Section 4 unless and until the portion of the Project to which such Loan Disbursement Requisition relates has been certified for funding by the NJDEP; and (iii) the Trust has no obligation pursuant to this Note to make all or any portion of any disbursement pursuant to the provisions of this Section 4 if the Borrower lacks the authority to pay interest on this Note in an amount equal to the Trust Portion Interest Rate.

**SECTION 5. Unconditional Obligations.** The obligation of the Borrower to make the Loan repayments and all other payments required hereunder and the obligation to perform and observe the other duties, covenants, obligations and agreements on its part contained herein shall be absolute and unconditional, and shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner whatsoever while any Loan repayments, or any other payments due hereunder, remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project or Environmental Infrastructure System, commercial frustration of the purpose, any change in the laws of the United States of America or of the State or any political subdivision of either or in the rules or regulations of any governmental authority, any failure of the Trust to perform and observe any agreement or any duty, liability or obligation arising out of this Note, or any rights of set-off, recoupment, abatement or counterclaim that the Borrower might have against the Trust or any

other party; provided, however, that payments hereunder shall not constitute a waiver of any such rights.

**SECTION 6. Events of Default.** The following events shall constitute an “Event of Default” hereunder: (i) failure by the Borrower to pay, when due, any and all of its Loan repayment obligations hereunder, and any other payment obligations due hereunder; (ii) failure by the Borrower to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed pursuant to the terms of this Note; (iii) any representation made by the Borrower contained in this Note or in any instrument furnished in compliance with or with reference to this Note is false or misleading in any material respect; and (iv) a petition is filed by or against the Borrower under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Note or thereafter enacted, unless in the case of any such petition filed against the Borrower such petition shall be dismissed within thirty (30) days after such filing and such dismissal shall be final and not subject to appeal, or the Borrower shall become insolvent or bankrupt or shall make an assignment for the benefit of its creditors, or a custodian of the Borrower or any of its property shall be appointed by court order or take possession of the Borrower or its property or assets if such order remains in effect or such possession continues for more than thirty (30) days.

**SECTION 7. Remedies upon Event of Default.** Whenever an Event of Default shall have occurred and be continuing pursuant to the terms hereof, the Borrower hereby acknowledges and agrees to the rights of the Trust to take any action permitted or required at law or in equity to collect the amounts then due and thereafter to become due hereunder or to enforce the observance and performance of any duty, covenant, obligation or agreement of the Borrower hereunder. If an Event of Default shall have occurred, the Borrower hereby acknowledges and agrees that the Trust shall have the right to declare all Loan repayments and all other amounts due hereunder to be due and payable immediately without further notice or demand. The Borrower hereby acknowledges and agrees that no remedy herein is intended to be exclusive, and every remedy shall be cumulative and in addition to every other remedy given under this Note or now or hereafter existing at law or in equity. The Borrower hereby further acknowledges and agrees that no delay or omission by the Trust to exercise any remedy or right accruing upon any Event of Default shall impair any such remedy or right or shall be construed to be a waiver thereof, but any such remedy or right may be exercised as often as may be deemed expedient. The Borrower hereby agrees that upon demand it shall pay to the Trust the reasonable fees and expenses of attorneys and other reasonable expenses (including, without limitation, the reasonably allocated costs of in-house counsel and legal staff) incurred in the collection of Loan repayments or any sum due hereunder or in the enforcement of the observation or performance of any obligations or agreements of the Borrower upon an Event of Default. Any moneys collected by the Trust pursuant to this Section 7 shall be applied first to pay any attorneys’ fees or other fees and expenses owed by the Borrower.

**SECTION 8. Certain Miscellaneous Provisions.** The Borrower hereby acknowledges and agrees as follows: (a) all notices hereunder shall be deemed given when hand delivered or when mailed by registered or certified mail, postage prepaid, to the Borrower at the following address: [Name and Address of Borrower, Attention: Name of Authorized Officer]; and to the

Trust at the following address: New Jersey Environmental Infrastructure Trust, 3131 Princeton Pike, Building 4, Suite 216, Lawrenceville, New Jersey 08648-2201, Attention: Executive Director; (b) this Note shall be binding upon the Borrower and its successors and assigns; (c) in the event any provision of this Note is held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof; (d) the obligations of the Borrower pursuant to the terms of this Note may not be assigned by the Borrower for any reason, unless the Trust shall have approved said assignment in writing; (e) this Note may not be amended, supplemented or modified without the prior written consent of the Trust; (f) this Note shall be governed by and construed in accordance with the laws of the State; (g) the Borrower shall, at the request of the Trust, execute and deliver such further instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Note; and (h) whenever the Borrower is required to obtain the determination, approval or consent of the Trust pursuant to the terms hereof, such determination, approval or consent may be either granted or withheld by the Trust in its sole and absolute discretion.

[The remainder of this page has been left blank intentionally.]



**IN WITNESS WHEREOF**, the Borrower has caused this Note to be duly executed, sealed and delivered on the date first above written.

**[NAME OF BORROWER]**

**[SEAL]**

**ATTEST:**

**By:** \_\_\_\_\_  
**Authorized Officer**

\_\_\_\_\_  
**Authorized Officer**

**TRUSTEE'S CERTIFICATE OF AUTHENTICATION**

This Note is delivered pursuant to the within-mentioned Borrower Note Resolution.

\_\_\_\_\_,  
**as Trustee**

**By:** \_\_\_\_\_  
**Authorized Signatory**

**EXHIBIT A-2**

**Loan Disbursements**

<b>Date of Loan Disbursement</b>	<b>Amount of Disbursement: Trust Portion</b>	<b>Amount of Disbursement: Fund Portion</b>

**[NAME OF PRIVATE BORROWER]**  
**NOTE**  
**RELATING TO:**  
**THE CONSTRUCTION FINANCING TRUST LOAN PROGRAM**  
**OF THE NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST**

\$ \_\_\_\_\_, 201\_\_\_\_  
CFP-18-\_\_\_\_

**FOR VALUE RECEIVED,** \_\_\_\_\_, a corporation duly created and validly existing pursuant to the laws of the State (as hereinafter defined), and its successors and assigns (the “Borrower”), hereby promises to pay to the order of the **NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST**, a public body corporate and politic with corporate succession, duly created and validly existing under and by virtue of the Act (as hereinafter defined) (the “Trust”), the Principal (as hereinafter defined), together with all unpaid accrued Interest (as hereinafter defined), fees, late charges and other sums due hereunder, if any, in lawful money of the United States of America, on the Maturity Date (as hereinafter defined) or the date of any optional prepayment or acceleration in accordance with the provisions of this note (this “Note”).

**SECTION 1. Definitions.** As used in this Note, unless the context requires otherwise, the following terms shall have the following meanings:

“**Act**” means the “New Jersey Environmental Infrastructure Trust Act”, constituting Chapter 334 of the Pamphlet Laws of 1985 of the State (codified at N.J.S.A. 58:11B-1 *et seq.*), as the same may from time to time be amended and supplemented.

“**Administrative Fee**” means a fee of up to four-tenths of one percent (.40%) of that portion of the Principal identified in clause (i) of the definition thereof (as set forth in this Section 1), or such lesser amount, if any, as the Trust may determine from time to time.

“**Anticipated Financing Program**” means the financing program of the Trust, pursuant to which the Trust will issue its Trust Bonds for the purpose of financing, on a long term basis, the Project and other projects of certain qualifying borrowers.

“**Anticipated Long Term Loan**” means the long term loan made by the Trust to the Borrower from the proceeds of its Trust Bonds, as part of the Anticipated Financing Program.

“**Authorized Officer**” means any person authorized by the Borrower or the Trust, as the case may be, to perform any act or execute any document relating to the Loan or this Note.

“**Borrower Note Resolution**” means the [resolution][indenture] of the Borrower entitled “[\_\_\_\_\_]”, [adopted on][dated] [\_\_\_\_\_], as amended and supplemented from time to time, pursuant to which this Note has been issued.

**“Business Corporation Law”** means the “New Jersey Business Corporation Act”, constituting Chapter 263 of the Pamphlet Laws of 1968 of the State (codified at N.J.S.A. 14A:1-1 *et seq.*), as the same may from time to time be amended and supplemented.

**“Code”** means the Internal Revenue Code of 1986, as the same may from time to time be amended and supplemented, including any regulations promulgated thereunder, any successor code thereto and any administrative or judicial interpretations thereof.

**“Cost”** means those costs that are allocable to the Project, as shall be determined on a project-specific basis in accordance with the Regulations, as further set forth in Exhibit B hereto, (i) as such Exhibit B shall be supplemented by an Authorized Officer of the Trust by means of either a substitute Exhibit B or an additional Exhibit B, such supplement to be implemented concurrently with the supplement to Exhibit A-1 hereto (as provided in the definition of “Project” as set forth herein), and (ii) as the then-current Exhibit B may be amended by subsequent changes to eligible costs as evidenced by a certificate of an Authorized Officer of the Trust.

**“Environmental Infrastructure Facilities”** means Wastewater Treatment Facilities, Stormwater Management Facilities or Water Supply Facilities (as such terms are defined in the Regulations).

**“Environmental Infrastructure System”** means the Environmental Infrastructure Facilities of the Borrower, including the Project, for which the Borrower is receiving the Loan.

**“Event of Default”** means any occurrence or event specified in Section 6 hereof.

**“Fund Portion”** means, on any date, an amount equal to seventy-five percent (75%) of the Principal of the Loan on such date, exclusive of that portion of the Principal of the Loan that is allocable to the NJDEP Loan Origination Fee, which NJDEP Loan Origination Fee shall be financed exclusively from the Trust Portion.

**“Interest”** means the interest charged on the outstanding Principal of the Loan at a rate of (a) with respect to the Trust Portion of the Principal, the applicable Trust Portion Interest Rate and (b) with respect to the Fund Portion of the Principal, 0.00%, and payable by the Borrower to the Trust (i) on the Maturity Date or (ii) with respect to any optional prepayment or acceleration of the Loan pursuant to the terms of this Note, on the date of such optional prepayment or acceleration, as the case may be.

**“Loan”** means the loan of the Principal, made by the Trust to the Borrower to finance or refinance a portion of the Cost of the Project, as evidenced by this Note.

**“Loan Disbursement Requisition”** means the requisition, to be executed by an Authorized Officer of the Borrower and approved by the NJDEP, in a form to be determined by the Trust and the NJDEP.

**“Maturity Date”** means June 30, [2021][2022], or (i) such earlier date as shall be determined by an Authorized Officer of the Trust in his or her sole discretion, which date shall be determined by such Authorized Officer of the Trust to be the date of the closing for the Anticipated Financing Program, or (ii) such later date (subject to the then-applicable limits of the Act) to be determined by an Authorized Officer of the Trust in his or her sole discretion, pursuant to a written certification thereof, as acknowledged and approved by an Authorized Officer of the Borrower.

**“NJDEP”** means the New Jersey Department of Environmental Protection.

**“NJDEP Loan Origination Fee”** means the “NJDEP Fee” as referenced and defined in Exhibit B hereto, which NJDEP Fee is an administrative fee that is payable by the Borrower to the NJDEP as a portion of the Cost of the Project that has been incurred by the Borrower for engineering and environmental services provided to the Borrower by the NJDEP.

**“Principal”** means the principal amount of the Loan, at any time being the lesser of (i) \_\_\_\_\_ Dollars (\$\_\_\_\_\_), or (ii) the aggregate outstanding amount as shall actually be disbursed to the Borrower by the Trust pursuant to one or more Loan Disbursement Requisitions, which Principal shall be payable by the Borrower to the Trust (i) on the Maturity Date or (ii) with respect to any optional prepayment or acceleration of the Loan pursuant to the terms of this Note, on the date of such optional prepayment or acceleration, as the case may be.

**“Project”** means the Environmental Infrastructure Facilities of the Borrower which constitutes a project for which the Trust is making the Loan to the Borrower, as further described in Exhibit A-1 hereto; provided, however, that the description of the Project, as set forth in Exhibit A-1 attached hereto, shall be supplemented by means of either (i) the substitution of a revised and updated Exhibit A-1 for the current Exhibit A-1 or (ii) the inclusion of an additional Exhibit A-1, in either case, promptly following the certification for funding by the NJDEP of the remaining components of the Project, as applicable, such supplement to be undertaken by an Authorized Officer of the Trust.

**“Regulations”** means the rules and regulations, as applicable, now or hereafter promulgated pursuant to N.J.A.C. 7:22-3 *et seq.*, 7:22-4 *et seq.*, 7:22-5 *et seq.*, 7:22-6 *et seq.*, 7:22-7 *et seq.*, 7:22-8 *et seq.*, 7:22-9 *et seq.* and 7:22-10 *et seq.*, as the same may from time to time be amended and supplemented.

**“State”** means the State of New Jersey.

**“Trust Bonds”** means the revenue bonds of the Trust to be issued, as part of the Anticipated Financing Program.

**“Trust Portion”** means, on any date, an amount equal to the aggregate of (i) twenty-five percent (25%) of the Principal of the Loan on such date, exclusive of that portion of the Principal of the Loan that is allocable to the NJDEP Loan Origination Fee, plus (ii) one hundred percent

(100%) of that portion of the Principal of the Loan that is allocable to the NJDEP Loan Origination Fee.

**“Trust Portion Interest Rate”** means, with respect to each disbursement of proceeds of the Trust Portion of the Loan, (a) to the extent that such disbursement is funded from moneys appropriated to the Trust, for the Construction Financing Trust Loan Program of the Trust, pursuant to an appropriations act of the State, the Trust Portion Interest Rate shall equal 0.00%, (b) to the extent that such disbursement is funded from available moneys of the Trust that are neither (i) appropriated to the Trust as provided by the preceding clause (a), nor (ii) borrowed from a financial institution pursuant to a line of credit or other similar financial instrument as provided by the succeeding clause (c), the Trust Portion Interest Rate shall equal the interest rate that is published as either the Thompson Financial TM3 “AAA” Municipal Market Data General Obligation Index (AMT) or the “BVAL” Index (relating to alternative minimum tax credits) of Bloomberg L.P. (or any subsidiary thereof), (with the particular index that is used by the Trust to be selected by an Authorized Officer of the Trust) or, if such indexes are no longer published on such date, such successor index as may be selected by an Authorized Officer of the Trust, in each case for the number of years that corresponds to the length of time from the date such disbursement is made available to the Borrower by the Trust to the Maturity Date, rounding up to the nearest year, or (c) to the extent that such disbursement is funded from available moneys of the Trust borrowed from a financial institution pursuant to a line of credit or other similar financial instrument, the Trust Portion Interest Rate shall equal the actual rate of interest established by the applicable financial institution pursuant to a competitive or negotiated solicitation by the Trust with respect to such line of credit or other financial instrument.

**SECTION 2. Representations of the Borrower.** The Borrower represents and warrants to the Trust:

(a) Organization. The Borrower: (i) is a corporation duly created and validly existing under and pursuant to the Constitution and laws of the State, including the Business Corporation Law; (ii) has full legal right and authority to execute, attest and deliver this Note, to authorize the authentication of this Note, to sell this Note to the Trust, and to perform its obligations hereunder, and (iii) has duly authorized, approved and consented to all necessary action to be taken by the Borrower for: (A) the issuance of this Note, the authentication of this Note, the sale thereof to the Trust and the due performance of its obligations hereunder and (B) the execution, delivery and due performance of all certificates and other instruments that may be required to be executed, delivered and performed by the Borrower in order to carry out and give effect to this Note.

(b) Authority. This Note has been duly authorized by the Borrower, and duly executed, attested and delivered by Authorized Officers of the Borrower, and duly authenticated by the trustee or the paying agent pursuant to the Borrower Note Resolution. This Note has been duly sold by the Borrower to the Trust and duly issued by the Borrower and constitutes a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms, except as the enforcement thereof may be affected by bankruptcy, insolvency or other laws or the application by a court of legal or equitable principles affecting creditors’ rights.

(c) Pending Litigation. There are no proceedings pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower that, if adversely determined, would adversely affect (i) the condition (financial or otherwise) of the Borrower, (ii) the adoption of the Borrower Note Resolution, (iii) the ability of the Borrower to satisfy all of its Loan repayment obligations hereunder, (iv) the authorization, execution, attestation, authentication or delivery of this Note, (v) the issuance of this Note and the sale thereof to the Trust, and (vi) the Borrower's ability otherwise to observe and perform its duties, covenants, obligations and agreements under this Note.

(d) Compliance with Existing Laws and Agreements; Governmental Consent. (i) The authorization, execution, attestation and delivery of this Note by the Borrower, (ii) the authentication of this Note by the trustee or paying agent pursuant to the Borrower Note Resolution, (iii) the adoption of the Borrower Note Resolution, (iv) the sale of this Note to the Trust, (v) the observation and performance by the Borrower of its duties, covenants, obligations and agreements hereunder, including, without limitation, the repayment of the Loan and all other amounts due hereunder, and (vi) the undertaking and completion of the Project, will not (A) other than the lien, charge or encumbrance created by this Note, result in the creation or imposition of any lien, charge or encumbrance upon any properties or assets of the Borrower pursuant to, (B) result in any breach of any of the terms, conditions or provisions of, or (C) constitute a default under, any existing ordinance or resolution, outstanding debt or lease obligation, trust agreement, indenture, mortgage, deed of trust, loan agreement or other instrument to which the Borrower is a party or by which the Borrower, its Environmental Infrastructure System or any of its properties or assets may be bound, nor will such action result in any violation of the provisions of the charter or other document pursuant to which the Borrower was established or any laws, ordinances, injunctions, judgments, decrees, rules, regulations or existing orders of any court or governmental or administrative agency, authority or person to which the Borrower, its Environmental Infrastructure System or its properties or operations are subject. The Borrower has obtained all permits and approvals required to date by any governmental body or officer for the authorization, execution, attestation, authentication and delivery of this Note, for the sale of this Note to the Trust, for the making, observance and performance by the Borrower of its duties, covenants, obligations and agreements under this Note, and for the undertaking and completion of the Project.

(e) Reliance. The Borrower hereby acknowledges that the Trust is making the Loan to the Borrower pursuant to the terms hereof in reliance upon each of the representations of the Borrower set forth in this Section 2.

### **SECTION 3. Covenants of the Borrower.**

(a) Participation in the Anticipated Financing Program. The Borrower covenants and agrees that it shall undertake and complete in a timely manner all conditions precedent identified by the Trust relating to (i) the participation by the Borrower in the Anticipated Financing Program and (ii) the qualification by the Borrower for receipt of the Anticipated Long Term Loan.



(b) Pledge. The Borrower unconditionally and irrevocably promises to make the Loan repayments in accordance with the terms of, and to the extent provided in, the Borrower Note Resolution for the punctual repayment of the Loan and all other amounts due pursuant to this terms of this Note.

(c) Disposition of Environmental Infrastructure System. The Borrower covenants and agrees that it shall not sell, lease, abandon or otherwise dispose of all or substantially all of its Environmental Infrastructure System without the express written consent of the Trust, which consent may or may not be granted by the Trust in its sole discretion.

(d) Financing With Tax-Exempt Bonds. The Borrower acknowledges, covenants and agrees that it is the intention of the Borrower to finance the Project on a long term basis with proceeds of Trust Bonds now or hereinafter issued, the interest on which is excluded from gross income for purposes of federal income taxation pursuant to Section 103(a) of the Code (“tax-exempt bonds”). In furtherance of such long term financing with tax-exempt bonds, the Borrower covenants that, except to the extent expressly permitted in writing by the Trust, the Borrower will not take any action or permit any action to be taken which would result in any of the proceeds of the Loan being used (directly or indirectly) to make or finance loans to persons other than the Borrower. In addition, the Borrower covenants and agrees that (i) all of the proceeds of the Loan will be used to pay costs of an exempt facility, within the meaning of Section 142 of the Code, which were paid and incurred by the Borrower no more than 60 days before the date on which the Trust adopted a declaration of intent with respect to the Project, and (ii) no portion of the Project will be investment property, within the meaning of Section 148(b) of the Code. The Borrower covenants and agrees that any Costs to be paid or reimbursed with proceeds of the Loan will result in the expenditure of proceeds under Treasury Regulations §1.148-6(d) and Treasury Regulations §1.150-2, for costs subject to the allowance for depreciation provided in Section 167 of the Code which are chargeable to the capital account of the Borrower with respect to such exempt facility.

(e) Operation and Maintenance of Environmental Infrastructure System. The Borrower covenants and agrees that it shall maintain its Environmental Infrastructure System in good repair, working order and operating condition, and make all necessary and proper repairs and improvements with respect thereto.

(f) Records and Accounts; Inspections. The Borrower covenants and agrees that it shall keep accurate records and accounts for its Environmental Infrastructure System, separate and distinct from its other records and accounts, which shall be audited annually by an independent registered certified public accountant and shall be made available for inspection by the Trust upon prior written notice. The Borrower shall permit the Trust to inspect the Environmental Infrastructure System.

(g) Insurance. The Borrower covenants and agrees that it shall maintain insurance policies providing against risk of direct physical loss, damage or destruction of its Environmental Infrastructure System, in an amount that will satisfy all applicable regulatory requirements. The Borrower covenants and agrees that it shall include, or cause to be included, the Trust as an

additional “named insured” on any certificate of liability insurance procured by the Borrower and by any contractor or subcontractor for the Project.

(h) Reliance. The Borrower hereby acknowledges that the Trust is making the Loan to the Borrower pursuant to the terms hereof in reliance upon each of the covenants of the Borrower set forth in this Section 3.

**SECTION 4. Disbursement of the Loan Proceeds; Amounts Payable; Prepayment; and Late Fee.** The Trust shall effectuate the Loan to the Borrower by making one or more disbursements to the Borrower promptly after receipt by the Trust of a Loan Disbursement Requisition and the approval of such Loan Disbursement Requisition by an Authorized Officer of the Trust or designee thereof, each such disbursement and the date thereof to be recorded by an Authorized Officer of the Trust on the table attached as Exhibit A-2 hereto; provided, however, that no Loan Disbursement Requisition shall be approved by the Trust for disbursement unless and until the portion of the Project to which such Loan Disbursement Requisition relates has been certified for funding by the NJDEP. It is expected that the proceeds of the Loan will be disbursed to the Borrower in accordance with Exhibit C hereto, as Exhibit C shall be supplemented by an Authorized Officer of the Trust by means of either a substitute Exhibit C or an additional Exhibit C, such supplement to be implemented concurrently with the supplement to Exhibit A-1 hereto (as provided in the definition of “Project” as set forth herein). The latest date upon which the Borrower may submit to the Trust a Loan Disbursement Requisition is the business day immediately preceding the date fixed by the Trust for the sale of its bonds in connection with the Anticipated Financing Program, or such alternative date as shall be identified by the Trust for the Borrower in writing. On the Maturity Date, the Borrower shall repay the Loan to the Trust in an amount equal to: (i) the Principal; (ii) the Interest; (iii) the Administrative Fee, if any; and (iv) any other amounts due and owing pursuant to the provisions of this Note. The Borrower may prepay the Loan obligations hereunder, in whole or in part, upon receipt of the prior written consent of an Authorized Officer of the Trust. Each payment made to the Trust shall be applied to the payment of, first, the Interest then due and payable, second, the Principal, third, the Administrative Fee, if any, fourth, any late charges, and, finally, any other amount due pursuant to the provisions of this Note. In the event that the repayment obligation set forth in this Note is received by the Trust later than the Maturity Date, a late fee shall be payable to the Trust in an amount equal to the greater of twelve percent (12%) per annum or the prime rate as published in the Wall Street Journal on the Maturity Date plus one half of one percent per annum on such late payment from the Maturity Date to the date it is actually paid; provided, however, that any late payment charges incurred hereunder shall not exceed the maximum interest rate permitted by law. Notwithstanding the provisions of this Section 4 to the contrary, the Borrower hereby acknowledges and agrees that, on the date of issuance of this Note, a disbursement shall be made and shall be recorded by an Authorized Officer of the Trust on the table attached as Exhibit A-2 hereto in the amount recorded thereon. Such disbursement shall be made for the purpose of funding fifty percent (50%) of the NJDEP Loan Origination Fee. Such disbursement shall be paid by the Trust on behalf of the Borrower directly to the NJDEP in satisfaction of the provisions hereof.

Notwithstanding the provisions of this Note to the contrary with respect to the funding, pursuant to this Section 4, of any Loan Disbursement Requisition relating to all or any portion of the

Project: (i) the Borrower hereby acknowledges and agrees that the Trust shall not, and shall not be required to, commit funds, pursuant to the Construction Financing Trust Loan Program of the Trust, to any portion of the Project until such time as the particular portion of the Project in question has been certified for funding by the NJDEP; (ii) no Loan Disbursement Requisition shall be approved by the Trust for disbursement pursuant to this Section 4 unless and until the portion of the Project to which such Loan Disbursement Requisition relates has been certified for funding by the NJDEP; and (iii) the Trust has no obligation pursuant to this Note to make all or any portion of any disbursement pursuant to the provisions of this Section 4 if the Borrower lacks the authority to pay interest on this Note in an amount equal to the Trust Portion Interest Rate.

**SECTION 5. Unconditional Obligations.** The obligation of the Borrower to make the Loan repayments and all other payments required hereunder and the obligation to perform and observe the other duties, covenants, obligations and agreements on its part contained herein shall be absolute and unconditional, and shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner whatsoever while any Loan repayments, or any other payments due hereunder, remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project or Environmental Infrastructure System, commercial frustration of the purpose, any change in the laws of the United States of America or of the State or any political subdivision of either or in the rules or regulations of any governmental authority, any failure of the Trust to perform and observe any agreement or any duty, liability or obligation arising out of this Note, or any rights of set-off, recoupment, abatement or counterclaim that the Borrower might have against the Trust or any other party; provided, however, that payments hereunder shall not constitute a waiver of any such rights.

**SECTION 6. Events of Default.** The following events shall constitute an “Event of Default” hereunder: (i) failure by the Borrower to pay, when due, any and all of its Loan repayment obligations hereunder, and any other payment obligations due hereunder; (ii) failure by the Borrower to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed pursuant to the terms of this Note; (iii) any representation made by the Borrower contained in this Note or in any instrument furnished in compliance with or with reference to this Note is false or misleading in any material respect; and (iv) a petition is filed by or against the Borrower under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Note or thereafter enacted, unless in the case of any such petition filed against the Borrower such petition shall be dismissed within thirty (30) days after such filing and such dismissal shall be final and not subject to appeal, or the Borrower shall become insolvent or bankrupt or shall make an assignment for the benefit of its creditors, or a custodian of the Borrower or any of its property shall be appointed by court order or take possession of the Borrower or its property or assets if such order remains in effect or such possession continues for more than thirty (30) days.

**SECTION 7. Remedies upon Event of Default.** Whenever an Event of Default shall have occurred and be continuing pursuant to the terms hereof, the Borrower hereby

acknowledges and agrees to the rights of the Trust to take any action permitted or required at law or in equity to collect the amounts then due and thereafter to become due hereunder or to enforce the observance and performance of any duty, covenant, obligation or agreement of the Borrower hereunder. If an Event of Default shall have occurred, the Borrower hereby acknowledges and agrees that the Trust shall have the right to declare all Loan repayments and all other amounts due hereunder to be due and payable immediately without further notice or demand. The Borrower hereby acknowledges and agrees that no remedy herein is intended to be exclusive, and every remedy shall be cumulative and in addition to every other remedy given under this Note or now or hereafter existing at law or in equity. The Borrower hereby further acknowledges and agrees that no delay or omission by the Trust to exercise any remedy or right accruing upon any Event of Default shall impair any such remedy or right or shall be construed to be a waiver thereof, but any such remedy or right may be exercised as often as may be deemed expedient. The Borrower hereby agrees that upon demand it shall pay to the Trust the reasonable fees and expenses of attorneys and other reasonable expenses (including, without limitation, the reasonably allocated costs of in-house counsel and legal staff) incurred in the collection of Loan repayments or any sum due hereunder or in the enforcement of the observation or performance of any obligations or agreements of the Borrower upon an Event of Default. Any moneys collected by the Trust pursuant to this Section 7 shall be applied first to pay any attorneys' fees or other fees and expenses owed by the Borrower.

**SECTION 8. Certain Miscellaneous Provisions.** The Borrower hereby acknowledges and agrees as follows: (a) all notices hereunder shall be deemed given when hand delivered or when mailed by registered or certified mail, postage prepaid, to the Borrower at the following address: [Name and Address of Borrower, Attention: Name of Authorized Officer]; and to the Trust at the following address: New Jersey Environmental Infrastructure Trust, 3131 Princeton Pike, Building 4, Suite 216, Lawrenceville, New Jersey 08648-2201, Attention: Executive Director; (b) this Note shall be binding upon the Borrower and its successors and assigns; (c) in the event any provision of this Note is held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof; (d) the obligations of the Borrower pursuant to the terms of this Note may not be assigned by the Borrower for any reason, unless the Trust shall have approved said assignment in writing; (e) this Note may not be amended, supplemented or modified without the prior written consent of the Trust; (f) this Note shall be governed by and construed in accordance with the laws of the State; (g) the Borrower shall, at the request of the Trust, execute and deliver such further instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Note; and (h) whenever the Borrower is required to obtain the determination, approval or consent of the Trust pursuant to the terms hereof, such determination, approval or consent may be either granted or withheld by the Trust in its sole and absolute discretion.

[The remainder of this page has been left blank intentionally.]

**IN WITNESS WHEREOF**, the Borrower has caused this Note to be duly executed, sealed and delivered on the date first above written.

**[NAME OF BORROWER]**

**[SEAL]**

**ATTEST:**

**By:** \_\_\_\_\_  
**Authorized Officer**

\_\_\_\_\_  
**Authorized Officer**

**TRUSTEE’S CERTIFICATE OF AUTHENTICATION**

This Note is delivered pursuant to the within-mentioned Borrower Note Resolution.

\_\_\_\_\_,

**as Trustee**

**By:** \_\_\_\_\_

**Authorized Signatory**

**EXHIBIT A-2**

**Loan Disbursements**

<b>Date of Loan Disbursement</b>	<b>Amount of Disbursement: Trust Portion</b>	<b>Amount of Disbursement: Fund Portion</b>

## RESOLUTION NO. 18 – 05

### RESOLUTION OF THE NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST AUTHORIZING THE STATE FISCAL YEAR 2019 SMALL SYSTEM LOAN PROGRAM

**WHEREAS**, pursuant to (i) Section 5(m) and Section 9(a) of the New Jersey Environmental Infrastructure Trust Act, constituting Chapter 334 of the Pamphlet Laws of 1985 of the State of New Jersey (the “State”), as the same has been, and in the future may from time to time be, amended and supplemented (N.J.S.A. 58:11B-1 *et seq.*) (the “Act”), and (ii) the regulations promulgated pursuant to the Act (N.J.A.C. 7:22-2.1 *et seq.*), as the same have been, and in the future may from time to time be, amended and supplemented (the “Regulations”), the New Jersey Environmental Infrastructure Trust (the “Trust”), a public body corporate and politic under the laws of the State, created pursuant to the Act, is authorized to make and contract to make loans (each, a “Trust Loan”) to project sponsors (each, a “Project Sponsor”) to finance a portion of the costs of the respective environmental infrastructure system projects thereof (each, a “Project”), which Project Sponsors may lawfully undertake or acquire and for which they are authorized by law to borrow funds, subject to such terms and conditions as the Trust shall determine to be consistent with the Act and the purposes of the Trust; and

**WHEREAS**, the Trust has partnered with the New Jersey Department of Environmental Protection (the “NJDEP”) for the purpose, among others, of making loans to Project Sponsors for the financing of water supply projects pursuant to the New Jersey Environmental Infrastructure Financing Program (the “NJEIFP” or the “Financing Program”); and

**WHEREAS**, specifically, the Trust and the State, acting by and through the NJDEP, make loans pursuant to the Financing Program in order to finance improvements to water supply systems serving populations of 10,000 or fewer (“Small Water Systems”), which loans are extended primarily to Project Sponsors consisting of small water companies and home owner associations; and

**WHEREAS**, Small Water Systems generally possess relatively limited financial and professional resources and, therefore, generally require a significantly greater commitment by the Financing Program in order to evaluate such Small Water Systems and the Projects thereof, in order to ensure that such Small Water Systems satisfy the conditions precedent to participation in the Financing Program, including, in particular and without limitation, the creditworthiness standards of the Financing Program; and

**WHEREAS**, notwithstanding the challenges for the Financing Program in assessing, among other things, the credit risks associated with the making of Financing Program loans to Small Water Systems, the NJDEP has concluded that the continued provision of Financing Program loans to Small Water Systems in order to finance Projects consisting of water supply system improvements is necessary and appropriate in order to address important public health issues for the affected communities throughout the State; and



**WHEREAS**, the Board of Directors of the Trust (the “Board”) desires to establish the Small System Loan Program, also known as the Nano Infrastructure Loan Program, (the “SSLP”) for State Fiscal Year 2019 (“SFY2019”) in order to serve as the Financing Program funding mechanism for water supply system improvements to Small Water Systems, while also addressing the credit risks posed by such Financing Program applicants in a manner satisfactory to the Trust.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of the Trust, as follows.

**Section 1.** The Board hereby authorizes the establishment of the SFY2019 SSLP for the purpose of making loans to qualifying Project Sponsors that operate a Small Water System, provided, however, that each of the following SSLP requirements must be satisfied, in full, as a condition precedent to the making by the Trust of a SSLP loan to a qualifying Project Sponsor for its Small Water System:

- a) all SSLP loans (each, an “SSLP Loan”) made to all qualifying Project Sponsors by the Trust and the NJDEP during SFY2019 pursuant to the SSLP shall not exceed \$4,000,000 in aggregate principal amount plus any funds remaining from any prior year SSLP Program (the “SSLP Cap”). For purposes of complying with the SSLP Cap, the following shall be subject to the SSLP Cap and the calculation thereof: (i) any short term loan made by the Trust during SFY2019 in anticipation of a future, long term SSLP Loan, and (ii) any long term SSLP Loan (or portion thereof) made during SFY2019, provided that such long term SSLP Loan (or such portion thereof) was not preceded by a prior short term loan; in the event that any portion of the SSLP Cap remains unutilized during SFY2019, the remaining SSLP funds that remain available pursuant to the SSLP Cap and that consist of the Trust’s Available Funds (as hereinafter defined) may be used by the Trust for the financing of other programs within the NJEIFP during SFY2019, subject to any other limitation that may be applicable thereto;
- b) the aggregate principal amount of the SSLP Loan made by the Trust and the NJDEP to any given qualifying Project Sponsor for its Small Water System during SFY2019 pursuant to the SSLP shall be no greater than \$1,000,000 and shall be no less than \$100,000;
- c) each long term SSLP Loan shall consist of the following components: (i) an NJDEP principal forgiveness loan in the amount of fifty percent (50%) of the allowable costs of the applicable Project; (ii) an NJDEP zero interest loan in the amount of twenty-five percent (25%) of the allowable costs of the applicable Project; and (iii) an interest bearing Trust Loan in the amount sufficient to finance twenty-five percent (25%) of the allowable costs of the applicable Project (the “Trust Loan Component”);

- d) the maximum principal forgiveness that shall be applied to each SSLP Loan extended to any qualifying Project Sponsor for its Small Water System during SFY2019 pursuant to the SSLP is \$500,000;
- e) the Trust Loan Component of each SSLP Loan made by the Trust to a qualifying Project Sponsor for its Small Water System during SFY2019 pursuant to the SSLP shall not exceed \$250,000 in aggregate principal amount;

allowable costs of any qualifying Project for a Small Water System in excess of that which is permitted to be financed through the SSLP shall be financed pursuant to the terms for which the project qualifies for under the Financing Program;

- f) the source of funds for the Trust Loan Component of each SSLP Loan made by the Trust during SFY2019 pursuant to the SSLP shall consist of one or both of (i) operating funds of the Trust that are not required for, or committed to, the operations of the Trust for State Fiscal Years 2019 and 2020 (the "Available Funds"), and/or (ii) the proceeds of bonds to be issued by the Trust ("Trust Bonds"); provided, however, that the Trust may, in the future, issue Trust Bonds for the purpose of replacing the Available Funds used to finance the Trust Loan Component of SSLP Loans made by the Trust during SFY2019, which Trust Bonds shall be issued pursuant to a bond resolution to be adopted by the Board prior to the issuance thereof;
- g) unless otherwise authorized pursuant to a resolution of the Board, the Trust Loan Component of each SSLP Loan made pursuant to the SSLP during SFY2019 shall bear interest at a rate per annum equal to either (i) the rate of interest on the bonds issued by the Trust in connection with the SSLP for the purpose of funding the Trust Loan Component, or (ii) if no such bonds are issued for the purpose of funding the Trust Loan Component and, therefore, Available Funds are used to fund the Trust Loan Component, as calculated pursuant to the "Interest Rate Calculation", as set forth in that certain Resolution adopted by the Trust on February 9, 2012 and entitled "Amended and Restated Resolution of the New Jersey Environmental Infrastructure Trust Relating to the Direct Loan Program and Certain Policies Regarding the Administration Thereof and the Granting of Direct Loans", as such resolution thereafter may be amended and supplemented from time to time;
- h) the Chairman, the Vice Chairman and the Executive Director of the Trust, or any other person or persons designated by the Board by resolution to act on behalf of the Trust, but in each case subject to the limitations of the by-laws of the Trust (each, an "Authorized Officer"), are each hereby authorized, at their respective discretion, (i) after consultation with Bond Counsel to the Trust, the Office of the Attorney General of the State, and the Financial Advisor to the Trust, and (ii) if and to the extent that a credit assessment of the Project Sponsor in question so

warrants, to require a Project Sponsor to establish a loan guarantee fund (the "Guarantee Fund"), in addition to the LLR Fund (as defined in and to the extent required by Section 3 hereof), in the event that (A) the principal amount of the SSLP Loan for which such Project Sponsor currently is applying, together with (B) the aggregate principal amount of all other SSLP Loans of such Project Sponsor then outstanding, exceed \$1,000,000 in aggregate principal amount, which Guarantee Fund shall serve as additional collateral for the repayment of the Trust Loan Component of each of the outstanding SSLP Loans of such Project Sponsor; to the extent required by an Authorized Officer pursuant to the terms hereof, the Guarantee Fund shall be established in an amount deemed appropriate thereby, but shall not exceed maximum annual debt service for the aggregate then-outstanding principal amount of the Trust Loan Components of the SSLP Loans of such Project Sponsor, multiplied by 2;

- i) any applicant with respect to the SSLP (in addition to satisfying all other SFY2019 NJEIFP loan conditions) shall demonstrate that its Small Water System is (and shall continue to be during the term of its SSLP Loan) managed in a professional manner that is consistent with the Federal Fiscal Year 2019 Drinking Water Intended Use Plan;
- j) SSLP Loan recipients shall not be subject to the imposition by the NJDEP of an NJDEP loan origination administrative fee; and
- k) SSLP Loan recipients shall not be subject to the imposition by the Trust of an administrative fee to cover any portion of the financing costs of the SSLP Loan, but (i) shall be subject to an annual Trust administrative fee for loan servicing in the annual amount of 0.30% of the original principal amount of the Trust Loan Component of the SSLP Loan, and (ii) shall be assessed the annual fee required in connection with the LLR Fund, as defined in and to the extent required by Section 3 hereof.

Except as otherwise provided by this Resolution, as a condition precedent to the receipt by an applicant of an SSLP Loan pursuant to the SFY2019 SSLP, such applicant shall comply fully with each eligibility requirement that shall apply to any applicant for participation in the SFY2019 NJEIFP.

**Section 2.** Any SFY2019 SSLP Loan made by the Trust shall be evidenced by the following:

- (a) a bond, note or other appropriate obligation of the Project Sponsor to be issued to the Trust (the "Obligation"), with the following covenants (in addition to other, programmatically-required SFY2019 NJEIFP loan covenants): (i) a municipality shall provide to the Trust a general obligation ("GO") pledge of the unlimited *ad valorem* taxing power thereof; (ii) a utility authority that has entered into a service agreement

containing one or more GO pledges from its municipal or county participants shall pledge to the Trust its right to receive payments pursuant to such service agreement; (iii) each such authority shall provide to the Trust a pledge of its revenues, and shall be subject to the various covenants and requirements of its general indenture or bond resolution, as applicable, including, without limitation, its obligation to raise and collect annual fees and charges to the extent necessary to fund all operating, capital and debt service expenses in order to manage and operate its water supply system in good working condition; (iv) a water company shall provide to the Trust a pledge of its revenues and shall be subject to the various covenants and requirements of its general indenture or bond resolution, including, without limitation, its obligation to raise and collect annual fees and charges to the extent necessary to fund all operating, capital and debt service expenses in order to manage and operate its water supply system in good working condition; and

- (b) any other documentation as shall be deemed necessary and appropriate by the Authorized Officer, after consultation with Bond Counsel to the Trust and the Office of the Attorney General of the State (collectively, the requirements of (a) and (b) of this Section 2 shall be referred to herein as the "Loan Instruments").

Each Obligation and all other Loan Instruments shall be in such form as shall be approved by an Authorized Officer, after consultation with Bond Counsel to the Trust and the Office of the Attorney General of the State. The Loan Instruments shall include such terms and provisions relating to, and required by, the SFY2019 NJEIFP as shall be determined by the Authorized Officer, after consultation with Bond Counsel to the Trust and the Office of the Attorney General of the State, as being necessary in connection with (i) the satisfaction of the requirements of the Act and the Regulations, and (ii) the implementation of the terms of this Resolution.

**Section 3.** Each SSLP Loan recipient that does not provide as security for its Obligation a direct or indirect municipal or county GO pledge shall be assessed an annual loan loss reserve fee consisting of 1% of the total outstanding principal amount of the Trust Loan Component of such recipient's SSLP Loan as of the given calculation date. This fee shall be non-refundable and shall be deposited by the Trust upon receipt thereof into a loan loss reserve fund ("LLR Fund") that shall be established and held by the Trust or a fiduciary thereof. All monies deposited into the LLR Fund shall be applied by the Trust solely to provide additional security for SSLP Loans. In addition, the Trust is hereby authorized and directed to accept any supplement to the LLR Fund that shall be paid by the NJDEP, initially from loan repayments of its Drinking Water annual capitalization grants, which supplement shall be in such amount as shall be necessary to secure any and all default risks with respect to the SSLP Loans, as such default risks are assessed and determined by an Authorized Officer, after consultation with Bond Counsel to the Trust, the Office of the Attorney General of the State and the Financial Advisor to the Trust. To the extent that, at any time, the amount on deposit in the LLR Fund, inclusive of any NJDEP contribution thereto, exceeds total outstanding SSLP Loan amounts, the NJDEP contribution to the LLR Fund in an amount equal to the excess outstanding SSLP Loan amount may, at the discretion of an Authorized Officer, be withdrawn from the LLR Fund and repaid to the NJDEP.

**Section 4.** The Authorized Officers are hereby severally authorized and directed to execute (i) any Loan Instrument to which the Trust is a party (the “Trust Loan Instruments”) and (ii) any certificates, instruments or documents contemplated therein or otherwise related to the participation of any Project Sponsor in the SFY2019 SSLP.

**Section 5.** Upon execution of the Trust Loan Instruments by an Authorized Officer, the Secretary and the Assistant Secretary of the Trust are each hereby severally authorized and directed, where required, to affix the corporate seal of the Trust, and to attest to the signature of such Authorized Officer, thereon and on any certificates, instruments or documents contemplated therein or related thereto.

**Section 6.** Any Authorized Officer is hereby authorized and directed to take such other actions that such Authorized Officer, in his respective sole discretion after consultation with Bond Counsel to the Trust and the Office of the Attorney General of the State, deems necessary, convenient or desirable in order to effect the establishment of the SFY2019 SSLP and the transactions contemplated hereby.

**Section 7.** The SSLP at all times shall fully comply with the provisions of the Act, the provisions of the Regulations applicable thereto, and the terms of this Resolution.

**Section 8.** This Resolution shall become effective in accordance with the terms of Section 4(i) of the Act (N.J.S.A. 58:11B-4(i)).

Adopted Date:	January 11, 2018
Motion Made By:	Michele Putnam
Motion Seconded By:	Roger Ellis
Ayes:	4
Nays:	0
Abstentions:	0

[NAME OF MUNICIPALITY]  
NOTE  
RELATING TO:  
THE CONSTRUCTION FINANCING TRUST LOAN PROGRAM  
(NANO INFRASTRUCTURE LOAN PROGRAM)  
OF THE NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST

\$ \_\_\_\_\_, 201\_\_

CFP-NANO-18-\_\_

**FOR VALUE RECEIVED,** \_\_\_\_\_, a municipal corporation duly created and validly existing pursuant to the laws of the State (as hereinafter defined), and its successors and assigns (the “Borrower”), hereby promises to pay to the order of the **NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST**, a public body corporate and politic with corporate succession, duly created and validly existing under and by virtue of the Act (as hereinafter defined) (the “Trust”), the Principal (as hereinafter defined), together with all unpaid accrued Interest (as hereinafter defined), fees, late charges and other sums due hereunder, if any, in lawful money of the United States of America, on the Maturity Date (as hereinafter defined) or the date of any optional prepayment or acceleration in accordance with the provisions of this note (this “Note”).

**SECTION 1. Definitions.** As used in this Note, unless the context requires otherwise, the following terms shall have the following meanings:

“**Act**” means the “New Jersey Environmental Infrastructure Trust Act”, constituting Chapter 334 of the Pamphlet Laws of 1985 of the State (codified at N.J.S.A. 58:11B-1 *et seq.*), as the same may from time to time be amended and supplemented.

“**Administrative Fee**” means a fee of up to four-tenths of one percent (.40%) of that portion of the Principal identified in clause (i) of the definition thereof (as set forth in this Section 1), or such lesser amount, if any, as the Trust may determine from time to time.

“**Anticipated Financing Program**” means the financing program of the Trust, pursuant to which the Trust will issue its Trust Bonds for the purpose of financing, on a long term basis, the Project and other projects of certain qualifying borrowers.

“**Anticipated Long Term Loan**” means the long term loan made by the Trust to the Borrower from the proceeds of its Trust Bonds, as part of the Anticipated Financing Program.

“**Authorized Officer**” means any person authorized by the Borrower or the Trust, as the case may be, to perform any act or execute any document relating to the Loan or this Note.

“**Code**” means the Internal Revenue Code of 1986, as the same may from time to time be amended and supplemented, including any regulations promulgated thereunder, any successor code thereto and any administrative or judicial interpretations thereof.

**“Cost”** means those costs that are allocable to the Project, as shall be determined on a project-specific basis in accordance with the Regulations, as further set forth in Exhibit B hereto, (i) as such Exhibit B shall be supplemented by an Authorized Officer of the Trust by means of either a substitute Exhibit B or an additional Exhibit B, such supplement to be implemented concurrently with the supplement to Exhibit A-1 hereto (as provided in the definition of “Project” as set forth herein), and (ii) as the then-current Exhibit B may be amended by subsequent changes to eligible costs as evidenced by a certificate of an Authorized Officer of the Trust.

**“Environmental Infrastructure Facilities”** means Wastewater Treatment Facilities, Stormwater Management Facilities or Water Supply Facilities (as such terms are defined in the Regulations).

**“Environmental Infrastructure System”** means the Environmental Infrastructure Facilities of the Borrower, including the Project, for which the Borrower is receiving the Loan.

**“Event of Default”** means any occurrence or event specified in Section 6 hereof.

**“Fund Portion”** means, on any date, an amount equal to seventy-five percent (75%) of the Principal of the Loan on such date.

**“Interest”** means the interest charged on the outstanding Principal of the Loan at a rate of (a) with respect to the Trust Portion of the Principal, the applicable Trust Portion Interest Rate and (b) with respect to the Fund Portion of the Principal, 0.00%, and payable by the Borrower to the Trust (i) on the Maturity Date or (ii) with respect to any optional prepayment or acceleration of the Loan pursuant to the terms of this Note, on the date of such optional prepayment or acceleration, as the case may be.

**“Loan”** means the loan of the Principal, made by the Trust to the Borrower to finance or refinance a portion of the Cost of the Project, as evidenced by this Note.

**“Loan Disbursement Requisition”** means the requisition, to be executed by an Authorized Officer of the Borrower and approved by the NJDEP, in a form to be determined by the Trust and the NJDEP.

**“Maturity Date”** means June 30, [2021][2022], or (i) such earlier date as shall be determined by an Authorized Officer of the Trust in his or her sole discretion, which date shall be determined by such Authorized Officer of the Trust to be the date of the closing for the Anticipated Financing Program, or (ii) such later date (subject to the then-applicable limits of the Act) to be determined by an Authorized Officer of the Trust in his or her sole discretion, pursuant to a written certification thereof, as acknowledged and approved by an Authorized Officer of the Borrower.

**“NJDEP”** means the New Jersey Department of Environmental Protection.

**“Principal”** means the principal amount of the Loan, at any time being the lesser of (i) \_\_\_\_\_ Dollars (\$\_\_\_\_\_), or (ii) the aggregate outstanding amount as shall actually be disbursed to the Borrower by the Trust pursuant to one or more Loan Disbursement Requisitions, which Principal shall be payable by the Borrower to the Trust (i) on the Maturity Date or (ii) with respect to any optional prepayment or acceleration of the Loan pursuant to the terms of this Note, on the date of such optional prepayment or acceleration, as the case may be.

**“Project”** means the Environmental Infrastructure Facilities of the Borrower which constitutes a project for which the Trust is making the Loan to the Borrower, as further described in Exhibit A-1 hereto; provided, however, that the description of the Project, as set forth in Exhibit A-1 attached hereto, shall be supplemented by means of either (i) the substitution of a revised and updated Exhibit A-1 for the current Exhibit A-1 or (ii) the inclusion of an additional Exhibit A-1, in either case, promptly following the certification for funding by the NJDEP of the remaining components of the Project, as applicable, such supplement to be undertaken by an Authorized Officer of the Trust.

**“Regulations”** means the rules and regulations, as applicable, now or hereafter promulgated pursuant to N.J.A.C. 7:22-3 *et seq.*, 7:22-4 *et seq.*, 7:22-5 *et seq.*, 7:22-6 *et seq.*, 7:22-7 *et seq.*, 7:22-8 *et seq.*, 7:22-9 *et seq.* and 7:22-10 *et seq.*, as the same may from time to time be amended and supplemented.

**“State”** means the State of New Jersey.

**“Trust Bonds”** means the revenue bonds of the Trust to be issued, as part of the Anticipated Financing Program.

**“Trust Portion”** means, on any date, an amount equal to twenty-five percent (25%) of the Principal of the Loan on such date.

**“Trust Portion Interest Rate”** means, with respect to each disbursement of proceeds of the Trust Portion of the Loan, (a) to the extent that such disbursement is funded from moneys appropriated to the Trust, for the Construction Financing Trust Loan Program of the Trust, pursuant to an appropriations act of the State, the Trust Portion Interest Rate shall equal 0.00%, (b) to the extent that such disbursement is funded from available moneys of the Trust that are neither (i) appropriated to the Trust as provided by the preceding clause (a), nor (ii) borrowed from a financial institution pursuant to a line of credit or other similar financial instrument as provided by the succeeding clause (c), the Trust Portion Interest Rate shall equal the interest rate that is published as either the Thompson Financial TM3 “AAA” Municipal Market Data General Obligation Index (Tax-Exempt) or the “BVAL” Index (relating to general obligation, tax exempt credits) of Bloomberg L.P. (or any subsidiary thereof), (with the particular index that is used by the Trust to be selected by an Authorized Officer of the Trust) or, if such indexes are no longer published on such date, such successor index as may be selected by an Authorized Officer of the Trust, in each case for the number of years that corresponds to the length of time from the date such disbursement is made available to the Borrower by the Trust to the Maturity Date, rounding up to the nearest year, or (c) to the extent that such disbursement is funded from available



moneys of the Trust borrowed from a financial institution pursuant to a line of credit or other similar financial instrument, the Trust Portion Interest Rate shall equal the actual rate of interest established by the applicable financial institution pursuant to a competitive or negotiated solicitation by the Trust with respect to such line of credit or other financial instrument.

**SECTION 2. Representations of the Borrower.** The Borrower represents and warrants to the Trust:

(a) Organization. The Borrower: (i) is a municipal corporation duly created and validly existing under and pursuant to the Constitution and laws of the State; (ii) has full legal right and authority to execute, attest and deliver this Note, to sell this Note to the Trust, and to perform its obligations hereunder, and (iii) has duly authorized, approved and consented to all necessary action to be taken by the Borrower for: (A) the issuance of this Note, the sale thereof to the Trust and the due performance of its obligations hereunder and (B) the execution, delivery and due performance of all certificates and other instruments that may be required to be executed, delivered and performed by the Borrower in order to carry out and give effect to this Note.

(b) Authority. This Note has been duly authorized by the Borrower and duly executed, attested and delivered by Authorized Officers of the Borrower. This Note has been duly sold by the Borrower to the Trust and duly issued by the Borrower and constitutes a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms, except as the enforcement thereof may be affected by bankruptcy, insolvency or other laws or the application by a court of legal or equitable principles affecting creditors' rights.

(c) Pending Litigation. There are no proceedings pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower that, if adversely determined, would adversely affect (i) the condition (financial or otherwise) of the Borrower, (ii) the ability of the Borrower to satisfy all of its Loan repayment obligations hereunder, (iii) the authorization, execution, attestation or delivery of this Note, (iv) the issuance of this Note and the sale thereof to the Trust, and (v) the Borrower's ability otherwise to observe and perform its duties, covenants, obligations and agreements under this Note.

(d) Compliance with Existing Laws and Agreements; Governmental Consent. (i) The due authorization, execution, attestation and delivery of this Note by the Borrower and the sale of this Note to the Trust, (ii) the observation and performance by the Borrower of its duties, covenants, obligations and agreements hereunder, including, without limitation, the repayment of the Loan and all other amounts due hereunder, and (iii) the undertaking and completion of the Project, will not (A) other than the lien, charge or encumbrance created by this Note and by any other outstanding debt obligations of the Borrower that are at parity with this Note as to lien on, and source and security for payment thereon from, the general tax revenues of the Borrower, result in the creation or imposition of any lien, charge or encumbrance upon any properties or assets of the Borrower pursuant to, (B) result in any breach of any of the terms, conditions or provisions of, or (C) constitute a default under, any existing ordinance or resolution, outstanding debt or lease obligation, trust agreement, indenture, mortgage, deed of trust, loan agreement or other instrument to which the Borrower is a party or by which the Borrower, its Environmental

Infrastructure System or any of its properties or assets may be bound, nor will such action result in any violation of the provisions of the charter or other document pursuant to which the Borrower was established or any laws, ordinances, injunctions, judgments, decrees, rules, regulations or existing orders of any court or governmental or administrative agency, authority or person to which the Borrower, its Environmental Infrastructure System or its properties or operations are subject. The Borrower has obtained all permits and approvals required to date by any governmental body or officer for the authorization, execution, attestation and delivery of this Note, for the sale of this Note to the Trust, for the making, observance and performance by the Borrower of its duties, covenants, obligations and agreements under this Note, and for the undertaking and completion of the Project.

(e) Reliance. The Borrower hereby acknowledges that the Trust is making the Loan to the Borrower pursuant to the terms hereof in reliance upon each of the representations of the Borrower set forth in this Section 2.

### **SECTION 3. Covenants of the Borrower.**

(a) Participation in the Anticipated Financing Program. The Borrower covenants and agrees that it shall undertake and complete in a timely manner all conditions precedent identified by the Trust relating to (i) the participation by the Borrower in the Anticipated Financing Program and (ii) the qualification by the Borrower for receipt of the Anticipated Long Term Loan.

(b) Full Faith and Credit Pledge. To secure the repayment obligation of the Borrower with respect to this Note, and all other amounts due under this Note, the Borrower unconditionally and irrevocably pledges its full faith and credit and covenants to exercise its unlimited taxing powers for the punctual payment of any and all obligations and amounts due under this Note. The Borrower acknowledges that, to assure the continued operation and solvency of the Trust, the Trust may, pursuant to and in accordance with Section 12a of the Act, require that if the Borrower fails or is unable to pay promptly to the Trust in full any Loan repayments, any Interest or any other amounts due pursuant to this Note, an amount sufficient to satisfy such deficiency shall be paid by the State Treasurer to the Trust from State-aid otherwise payable to the Borrower.

(c) Disposition of Environmental Infrastructure System. The Borrower covenants and agrees that it shall not sell, lease, abandon or otherwise dispose of all or substantially all of its Environmental Infrastructure System without the express written consent of the Trust, which consent may or may not be granted by the Trust in its sole discretion.

(d) Financing With Tax-Exempt Bonds. The Borrower acknowledges, covenants and agrees that it is the intention of the Borrower to finance the Project on a long term basis with proceeds of Trust Bonds now or hereinafter issued, the interest on which is excluded from gross income for purposes of federal income taxation pursuant to Section 103(a) of the Code (“tax-exempt bonds”). In furtherance of such long term financing with tax-exempt bonds, the Borrower covenants that, except to the extent expressly permitted in writing by the Trust, the Borrower will not take any action or permit any action to be taken which would result in any of

the proceeds of the Loan being used (directly or indirectly) (i) in any “private business use” within the meaning of Section 141(b)(6) of the Code, (ii) to make or finance loans to persons other than the Borrower, or (iii) to acquire any “nongovernmental output property” within the meaning of Section 141(d)(2) of the Code. In addition, the Borrower covenants and agrees that no portion of the Project will be investment property, within the meaning of Section 148(b) of the Code. The Borrower covenants and agrees that any Costs of the Borrower’s Project to be paid or reimbursed with proceeds of the Loan will result in the expenditure of proceeds under Treasury Regulations §1.148-6(d) and Treasury Regulations §1.150-2.

(e) Operation and Maintenance of Environmental Infrastructure System. The Borrower covenants and agrees that it shall maintain its Environmental Infrastructure System in good repair, working order and operating condition, and make all necessary and proper repairs and improvements with respect thereto.

(f) Records and Accounts; Inspections. The Borrower covenants and agrees that it shall keep accurate records and accounts for its Environmental Infrastructure System (the “System Records”), separate and distinct from its other records and accounts (the “General Records”), which shall be audited annually by an independent registered municipal accountant and shall be made available for inspection by the Trust upon prior written notice. The Borrower shall permit the Trust to inspect the Environmental Infrastructure System.

(g) Insurance. The Borrower covenants and agrees that it shall maintain insurance policies providing against risk of direct physical loss, damage or destruction of its Environmental Infrastructure System, in an amount that will satisfy all applicable regulatory requirements. The Borrower covenants and agrees that it shall include, or cause to be included, the Trust as an additional “named insured” on any certificate of liability insurance procured by the Borrower and by any contractor or subcontractor for the Project.

(h) Reliance. The Borrower hereby acknowledges that the Trust is making the Loan to the Borrower pursuant to the terms hereof in reliance upon each of the covenants of the Borrower set forth in this Section 3.

**SECTION 4. Disbursement of the Loan Proceeds; Amounts Payable; Prepayment; and Late Fee.** The Trust shall effectuate the Loan to the Borrower by making one or more disbursements to the Borrower promptly after receipt by the Trust of a Loan Disbursement Requisition, and the approval of such Loan Disbursement Requisition by an Authorized Officer of the Trust or designee thereof, each such disbursement and the date thereof to be recorded by an Authorized Officer of the Trust on the table attached as Exhibit A-2 hereto; provided, however, that no Loan Disbursement Requisition shall be approved by the Trust for disbursement unless and until the portion of the Project to which such Loan Disbursement Requisition relates has been certified for funding by the NJDEP. It is expected that the proceeds of the Loan will be disbursed to the Borrower in accordance with Exhibit C hereto, as Exhibit C shall be supplemented by an Authorized Officer of the Trust by means of either a substitute Exhibit C or an additional Exhibit C, such supplement to be implemented concurrently with the supplement to Exhibit A-1 hereto (as provided in the definition of “Project” as set forth herein). The latest date upon which the Borrower may submit to the Trust a Loan Disbursement

Requisition is the business day immediately preceding the date fixed by the Trust for the sale of its bonds in connection with the Anticipated Financing Program, or such alternative date as shall be identified by the Trust for the Borrower in writing. On the Maturity Date, the Borrower shall repay the Loan to the Trust in an amount equal to: (i) the Principal; (ii) the Interest; (iii) the Administrative Fee, if any; and (iv) any other amounts due and owing pursuant to the provisions of this Note. The Borrower may prepay the Loan obligations hereunder, in whole or in part, upon receipt of the prior written consent of an Authorized Officer of the Trust. Each payment made to the Trust shall be applied to the payment of, first, the Interest then due and payable, second, the Principal, third, the Administrative Fee, if any, fourth, any late charges, and, finally, any other amount due pursuant to the provisions of this Note. In the event that the repayment obligation set forth in this Note is received by the Trust later than the Maturity Date, a late fee shall be payable to the Trust in an amount equal to the greater of twelve percent (12%) per annum or the prime rate as published in the Wall Street Journal on the Maturity Date plus one half of one percent per annum on such late payment from the Maturity Date to the date it is actually paid; provided, however, that any late payment charges incurred hereunder shall not exceed the maximum interest rate permitted by law.

Notwithstanding the provisions of this Note to the contrary with respect to the funding, pursuant to this Section 4, of any Loan Disbursement Requisition relating to all or any portion of the Project: (i) the Borrower hereby acknowledges and agrees that the Trust shall not, and shall not be required to, commit funds, pursuant to the Construction Financing Trust Loan Program of the Trust, to any portion of the Project until such time as the particular portion of the Project in question has been certified for funding by the NJDEP; (ii) no Loan Disbursement Requisition shall be approved by the Trust for disbursement pursuant to this Section 4 unless and until the portion of the Project to which such Loan Disbursement Requisition relates has been certified for funding by the NJDEP; and (iii) the Trust has no obligation pursuant to this Note to make all or any portion of any disbursement pursuant to the provisions of this Section 4 if the Borrower lacks the authority to pay interest on this Note in an amount equal to the Trust Portion Interest Rate.

**SECTION 5. Unconditional Obligations.** The direct, general obligation of the Borrower to make the Loan repayments and all other payments required hereunder and the obligation to perform and observe the other duties, covenants, obligations and agreements on its part contained herein shall be absolute and unconditional, and shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner whatsoever while any Loan repayments, or any other payments due hereunder, remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project or Environmental Infrastructure System, commercial frustration of the purpose, any change in the laws of the United States of America or of the State or any political subdivision of either or in the rules or regulations of any governmental authority, any failure of the Trust to perform and observe any agreement or any duty, liability or obligation arising out of this Note, or any rights of set-off, recoupment, abatement or counterclaim that the Borrower might have against the Trust or any other party; provided, however, that payments hereunder shall not constitute a waiver of any such rights.

**SECTION 6. Events of Default.** The following events shall constitute an “Event of Default” hereunder: (i) failure by the Borrower to pay, when due, any and all of its Loan repayment obligations hereunder, and any other payment obligations due hereunder; (ii) failure by the Borrower to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed pursuant to the terms of this Note; (iii) any representation made by the Borrower contained in this Note or in any instrument furnished in compliance with or with reference to this Note is false or misleading in any material respect; and (iv) a petition is filed by or against the Borrower under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Note or thereafter enacted, unless in the case of any such petition filed against the Borrower such petition shall be dismissed within thirty (30) days after such filing and such dismissal shall be final and not subject to appeal, or the Borrower shall become insolvent or bankrupt or shall make an assignment for the benefit of its creditors, or a custodian of the Borrower or any of its property shall be appointed by court order or take possession of the Borrower or its property or assets if such order remains in effect or such possession continues for more than thirty (30) days.

**SECTION 7. Remedies upon Event of Default.** Whenever an Event of Default shall have occurred and be continuing pursuant to the terms hereof, the Borrower hereby acknowledges and agrees to the rights of the Trust to take any action permitted or required at law or in equity to collect the amounts then due and thereafter to become due hereunder or to enforce the observance and performance of any duty, covenant, obligation or agreement of the Borrower hereunder. If an Event of Default shall have occurred, the Borrower hereby acknowledges and agrees that the Trust shall have the right to declare all Loan repayments and all other amounts due hereunder to be due and payable immediately without further notice or demand. The Borrower hereby acknowledges and agrees that no remedy herein is intended to be exclusive, and every remedy shall be cumulative and in addition to every other remedy given under this Note or now or hereafter existing at law or in equity. The Borrower hereby further acknowledges and agrees that no delay or omission by the Trust to exercise any remedy or right accruing upon any Event of Default shall impair any such remedy or right or shall be construed to be a waiver thereof, but any such remedy or right may be exercised as often as may be deemed expedient. The Borrower hereby agrees that upon demand it shall pay to the Trust the reasonable fees and expenses of attorneys and other reasonable expenses (including, without limitation, the reasonably allocated costs of in-house counsel and legal staff) incurred in the collection of Loan repayments or any sum due hereunder or in the enforcement of the observation or performance of any obligations or agreements of the Borrower upon an Event of Default. Any moneys collected by the Trust pursuant to this Section 7 shall be applied first to pay any attorneys’ fees or other fees and expenses owed by the Borrower.

**SECTION 8. Certain Miscellaneous Provisions.** The Borrower hereby acknowledges and agrees as follows: (a) all notices hereunder shall be deemed given when hand delivered or when mailed by registered or certified mail, postage prepaid, to the Borrower at the following address: [Name and Address of Borrower, Attention: Name of Authorized Officer]; and to the Trust at the following address: New Jersey Environmental Infrastructure Trust, 3131 Princeton Pike, Building 4, Suite 216, Lawrenceville, New Jersey 08648-2201, Attention: Executive Director; (b) this Note shall be binding upon the Borrower and its successors and assigns; (c) in

the event any provision of this Note is held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof; (d) the obligations of the Borrower pursuant to the terms of this Note may not be assigned by the Borrower for any reason, unless the Trust shall have approved said assignment in writing; (e) this Note may not be amended, supplemented or modified without the prior written consent of the Trust; (f) this Note shall be governed by and construed in accordance with the laws of the State; (g) the Borrower shall, at the request of the Trust, execute and deliver such further instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Note; and (h) whenever the Borrower is required to obtain the determination, approval or consent of the Trust pursuant to the terms hereof, such determination, approval or consent may be either granted or withheld by the Trust in its sole and absolute discretion.

[The remainder of this page has been left blank intentionally.]

**IN WITNESS WHEREOF**, the Borrower has caused this Note to be duly executed, sealed and delivered on the date first above written.

**[NAME OF BORROWER]**

**[SEAL]**

**ATTEST:**

**By:** \_\_\_\_\_  
**Mayor**

\_\_\_\_\_  
**Clerk**

**By:** \_\_\_\_\_  
**Chief Financial Officer**





## RESOLUTION NO. 18 - 06

### RESOLUTION OF THE NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST APPROVING A CONSTRUCTION LOAN TO CUMBERLAND COUNTY

**WHEREAS**, the New Jersey Environmental Infrastructure Trust (the "Trust"), in accordance with (i) the "New Jersey Environmental Infrastructure Trust Act", constituting Chapter 334 of the Pamphlet Laws of 1985 of the State of New Jersey (codified at N.J.S.A. 58:11B-1 *et seq.*), as the same may from time to time be amended and supplemented (the "Act"), and (ii) the regulations promulgated pursuant to the Act (N.J.A.C. 7:22-2.1 *et seq.*), as the same may from time to time be amended and supplemented (the "Regulations"), is authorized, pursuant to an interim financing program (the "Interim Financing Program"), to make loans (each, an "Interim Loan") to eligible project sponsors (each, a "Borrower") for the purpose of financing the allowable costs of environmental infrastructure projects, provided that each such Interim Loan satisfies the requirements of the Regulations, including, without limitation, N.J.A.C. 7:22-4.47; and

**WHEREAS**, pursuant to the provisions of N.J.A.C. 7:22-4.47, a proposed project sponsor is eligible to be a Borrower for an Interim Loan pursuant to the Interim Financing Program, provided all of the following conditions are satisfied in full: (i) the project is listed on the project priority list developed in accordance with N.J.A.C. 7:22-4.8(a) for funding in the forthcoming State Fiscal Year; (ii) the proposed project sponsor has submitted a complete application for the project in accordance with N.J.A.C. 7:22-4.11; (iii) the project has been certified for funding by the Trust in accordance with N.J.A.C. 7:22-4.13; (iv) the project is in the fundable range in the forthcoming funding cycle given the project's rank and the anticipated availability of Department of Environmental Protection (the "Department") and Trust monies; and (v) the proposed project sponsor has not previously received an Interim Loan through the Interim Financing Program for the same project scope; and

**WHEREAS**, the Trust duly adopted Resolution No. 18-03 on January 11, 2018 entitled "Amended and Restated Resolution Authorizing Various Short-Term Financing Programs for State Fiscal Year 2018" (the "2018 Authorizing Resolution") to provide funding for the implementation of the Interim Financing Program during State Fiscal Year 2018 including the Construction Financing Program (the "SFY 2018 Construction Loan Program"); and

**WHEREAS**, the Trust duly adopted Resolution No. 18-04 on January 11, 2018 entitled "Resolution Authorizing the Construction Loan Financing Program for State Fiscal Year 2019" (the "2019 Authorizing Resolution") to provide funding for the implementation of the Interim Financing Program during State Fiscal Year 2019 including the Construction Financing Program (the "SFY 2019 Construction Loan Program"); and

**WHEREAS**, it is the desire of the Board to authorize Construction Loan Closings pursuant to the Interim Financing SFY2018 Construction Loan Program for loan closings occurring in SFY2018 and the Interim Financing SFY2019 Construction Loan Program for loan closings occurring in SFY2019 (each the "Applicable Construction Loan Program"); and

**WHEREAS**, pursuant to the terms of the 2018 Authorizing Resolution and 2019 Authorizing Resolution (each the “Applicable Authorizing Resolution”), the Authorized Officers (as defined therein) are each severally authorized, after consultation with Bond Counsel to the Trust and the Office of the Attorney General of the State, to approve the participation of a Borrower in the Applicable Construction Loan Program, provided that such Borrower qualifies for such participation pursuant to the provisions of the Act and the Regulations and the terms of the Applicable Authorizing Resolution; and

**WHEREAS**, pursuant to Section 5 of the 2018 Authorizing Resolution, any Interim Loan approved by the Authorized Officers, following the requisite consultations, and made by the Trust to a Borrower as part of the Applicable Construction Loan Program shall not exceed \$10,000,000 in principal amount (SFY2018 Construction Loan Limitation); and

**WHEREAS**, pursuant to Section 5 of the 2019 Authorizing Resolution, any Interim Loan approved by the Authorized Officers, following the requisite consultations, and made by the Trust to a Borrower as part of the Applicable Construction Loan Program shall not exceed \$15,000,000 in principal amount (SFY2019 Construction Loan Limitation); and

**WHEREAS**, pursuant to Section 2 of the Applicable Authorizing Resolutions, revisions and modifications may be made to terms and provisions of the Short-Term Financing Program pursuant to further official action in the form of the adoption of a resolution by the Board of Directors of the Trust; and

**WHEREAS**, Cumberland County (“Cumberland”) has requested from the Trust a construction loan, in anticipation of a long-term loan from each of the Trust and the Department, to finance the construction of Project # S340438-01 – Downe Wastewater Infrastructure, (the “Cumberland Project”); and

**WHEREAS**, pursuant to the Cumberland Project construction schedule, a Construction Loan not to exceed three full fiscal years will be made available for construction, all or a portion of which will be completed prior to Cumberland’s receipt of a Trust and Department long-term New Jersey Environmental Infrastructure Financing Program loan, thereby resulting in Cumberland’s request for a construction loan in an amount not to exceed \$16 million; and

**WHEREAS**, with respect to the Applicable Authorizing Resolutions’ Construction Loan Limitations providing that any Construction Loan approved by the Authorized Officers, following the requisite consultations, and made by the Trust to a Borrower as part of the Applicable Construction Loan Program shall not exceed \$10,000,000, or \$15,000,000, in principal amount, subject to further official action in the form of the adoption of a resolution by the Board of Directors of the Trust, the Trust now desires, given the facts and circumstances set forth in the recitals hereto, to create as an exception to such limitation of Construction Loans, as part of the Applicable Construction Loan Program, to the aforementioned project sponsor in amount not to exceed the amount stated for the purpose of completing the Cumberland Project; and

**WHEREAS**, it is the desire of the Trust that, other than the Applicable Authorizing

Resolutions' Construction Loan Limitations described in the immediately preceding recital, the project sponsor shall comply with (i) all other requirements of the Applicable Authorizing Resolution, (ii) all applicable requirements of the Act, and (iii) all applicable requirements of the Regulations.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of the New Jersey Environmental Infrastructure Trust, as follows:

**Section 1.** Notwithstanding the Applicable Authorizing Resolutions' Construction Loan Limitations providing that all Loans approved by the Authorized Officers, following the requisite consultations, and made by the Trust to Borrowers as part of the Applicable Construction Loan Program, shall not exceed \$10,000,000, or \$15,000,000 in principal amount, the Board of Directors of the Trust, given the facts and circumstances set forth in the recitals hereto, hereby authorizes, as an exception to Construction Loan Limitations, an Interim Loan, as part of the SFY 2018 and SFY2019 Construction Loan Programs, to the following project sponsor for the stated project in an amount not to exceed the amount stated for the purpose of completing each such project.

<b>Project Sponsor</b>	<b>Project #</b>	<b>Description</b>	<b>Total Authorized Loan Amount</b>
Cumberland County	S340438-01	Downe Wastewater Infrastructure	\$16 million

**Section 2.** Other than the exceptions created by the provisions of Section 1 of this Resolution, the Construction Loan made to the aforementioned project sponsor as part of the Applicable Construction Loan Program shall comply fully with (i) each of the terms, provisions and conditions precedent set forth in the Authorizing Resolution, (ii) all applicable requirements of the Act, and (iii) all applicable requirements of the Regulations.

Adopted Date: January 11, 2018

Motion Made By: Roger Ellis

Motion Seconded By: Mark Longo

Ayes: 4

Nays: 0

Abstentions: 0

**SUMMARY OF ANNOUNCEMENTS:**

Executive Director Zimmer summarized the substantive events and correspondence issued since the last Trust Board meeting.

- On **January 5, 2018**, Executive Director Zimmer participated, as a member, in the Jersey Water Works’ quarterly Steering Committee meeting;
- On **December 28, 2017**, Executive Director Zimmer, Chief Financial Officer Kaltman, and DEP Assistant Director, Gene Chebra met with Planning Consultant, Tiffany Bohlin to discuss potential financing for a Harrison redevelop project involving green and gray infrastructure;
- Program staff held and attended various conference calls to discuss pre-planning and prospective financing program participation by:
  - Bayview Marina LLC (Sea Village Marina) – Financing options
  - Hardyston MUA – Pre-planning
  - Hoboken – Financing options
  - Montclair Twp – Financing options
  - Passaic Valley SC – Pre-planning
  - Plainfield MUA – Pre-planning
  - PVSC – Project Financing
  - Woolwich – Project financing
- Executive Director Zimmer continues to serve as a Steering Committee member and co-Chair of the Jersey Water Works Finance Committee and co-host quarterly Finance Committee meetings;
- Assistant Director and Chief Operating Officer Scangarella and NJEIT’s IT staff continue to hold the H2LOans Webinar series to further educate staff and the public on the Program’s H2LOans system;
- Trust senior staff continue to meet with consultants from CohnReznick to discuss internal control mechanisms of the Trust’s Policies and Procedures; and
- **The next Board meeting is scheduled for February 8, 2018 at 10:00 a.m. at the Trust’s offices.**

**SUMMARY OF CORRESPONDENCE:**

During the past month, the Trust received or sent the noteworthy correspondence listed below. Pursuant to the Trust’s Green Initiative, the agenda package does not include copies of the following correspondence. Board members should contact the Trust Secretary if they wish to receive hard copies.

- 5.02 Certificates were sent to the following Program borrowers:

2013A	Marlboro Twp	W1328002-001
2014A	Gloucester City	W0414001-016/017
2014A	Phillipsburg Town	S340 874-05
2016A-1	Old Bridge MUA	S340 945-13

A copy of the announcements is available on the Trust’s webpage (<https://www.njeit.org/agenda/>) under the Board Meeting Agendas section under Menu. Click on the minutes link for the corresponding month; the announcements will be at the end of the Minutes.