

RESOLUTION NO. 11 - 16

RESOLUTION OF THE NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST AUTHORIZING THE EMERGENCY FINANCING PROGRAM

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 of New Jersey (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 emergency financing program (the “Emergency Financing Program”), to make loans (each an “Emergency Loan”) to eligible project sponsors (each a “Borrower”) for the purpose of financing the allowable costs of the emergency repair of environmental infrastructure projects (each an “Emergency Project”), provided that each such Emergency Loan made by the Trust to a Borrower for an Emergency Project satisfies the requirements of the Act, including, without limitation, N.J.S.A. 58:11B-9.1, and any applicable Regulations; 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 Emergency Financing Program, pursuant to the general parameters set forth herein, including, without limitation, the following conditions precedent that must be satisfied in full in connection with any Emergency Loan made by the Trust to a qualifying Borrower for its Emergency Project: (i) the project sponsor is a local government unit (as defined in the Act); (ii) the Commissioner (the “Commissioner”) of the New Jersey Department of Environmental Protection (the “NJDEP”) has determined and certified, in writing, that the Emergency Project constitutes an emergency because of an imminent threat to the environment or the public health, safety or welfare caused by structural or mechanical failure, sabotage or act of God, all in accordance with N.J.S.A. 58:11B-9.1; (iii) the project sponsor has submitted to the Trust a complete Emergency Financing Program Financial Addendum Form for the Emergency Project; (iv) the Emergency Project has been certified for funding by the Trust in accordance with N.J.A.C. 7:22-4.13; (v) there exists sufficient available monies on balance in the Emergency Loan Fund (as defined in the Act) for the Emergency Project; and (vi) the project is included in neither a financial plan (as described in N.J.S.A. 58:11B-21 and 21.1) nor an appropriations act of the New Jersey State Legislature for the ensuing fiscal year (items (i) through (vi) hereof shall be referred to collectively herein as the “Emergency Financing Program Conditions Precedent”); and

WHEREAS, it is the desire of the Trust that the Emergency Financing Program authorized hereby shall provide an Emergency Loan to a Borrower only for an Emergency Project that (i) is the subject of a certification by the Commissioner, and (ii) addresses an emergency environmental infrastructure impairment that conforms with the requirements of the Act (N.J.S.A. 58:11B-9.1) (items (i) and (ii) hereof shall be referred to collectively herein as the “Emergency Financing Program Conditions Subsequent”); and

WHEREAS, it is the desire of the Trust to establish certain terms for each Emergency Loan made by the Trust as part of the Emergency Financing Program authorized hereby, including, without limitation, the following: (i) the effective date of a given Emergency Loan shall be the date of execution and delivery of the applicable Loan Instrument (as hereinafter defined) by each party thereto (the “Effective Date”); (ii) the Emergency Loan shall have a loan maturity date of not later than twenty four months following the Effective Date (the “Maturity Date”); (iii) the rate of interest to be paid by the Borrower to the Trust with respect to the repayment of the Emergency 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 the policy goals of the Emergency Financing Program as set forth in this Resolution and the tax exempt market’s perceived level of risk as of the Effective Date for the Emergency Loan: the product of (A) the interest rate as defined by the Thompson Financial TM3 1 Year “AAA” Municipal Market Data Index, and (B) 0.50; (iv) the Emergency Loan shall not exceed \$600,000 in principal amount; (v) the Emergency Loan shall not be subject to the imposition by the Trust of an administrative fee; and (vi) the stated source of repayment by the Borrower to the Trust of the Emergency Loan (the “Stated Source of Repayment”) shall be the anticipated participation by the Borrower in the annual New Jersey Environmental Infrastructure Financing Program as administered by the Trust and the NJDEP (the “Financing Program”) prior to the Maturity Date, or, in the event of the failure on the part of the Borrower to qualify for and participate in the Financing Program prior to the Maturity Date for any reason, a source of funds, other than the Financing Program, that is available to the Borrower for such purpose, including, without limitation, the proceeds of short-term or long-term debt that may be incurred by the Borrower independent of the Emergency Financing Program; and

WHEREAS, pursuant to the Act, the source of funding for the Emergency Financing Program authorized hereby shall be the Emergency Loan Fund (the “Available Funds”), see N.J.S.A. 58:11B-5(o).

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 Emergency Financing Program, provided (i) such Emergency Financing Program shall be funded solely from the Available Funds, (ii) aggregate, outstanding Emergency Loans shall not exceed \$2 million at any time, (iii) the availability to qualifying applicants of Emergency Loans shall be prioritized based upon the chronological order of receipt of each of the Emergency Loan applications, (iv) such Emergency Loan shall not jeopardize the availability of sufficient Available Funds for an Emergency Loan for any and all previously received Emergency Financing Program applications currently under review by the NJDEP and/or the Trust, and (v) Emergency Loans shall fully comply with the provisions of the Act, the Regulations applicable thereto and the terms of this Resolution, including, without limitation, the Emergency Financing Program Conditions Precedent and the Emergency Financing Program Conditions Subsequent.

Section 2. Any Emergency Loan made by the Trust as part of the Emergency Financing Program shall be evidenced and secured by (i) a note or other appropriate obligation of the Borrower to be issued to the Trust that represents the direct and general obligation of either such Borrower or one or more municipal participants in the Borrower service agreement, in either case secured by the full faith and credit thereof, and accompanied by an opinion of counsel to the effect that such Borrower or such municipal participant has the power and is obligated, if necessary, to levy *ad valorem* taxes upon all of the taxable property located therein for the payment of such obligations without limitation as to rate or amount, and (ii) any other documentation as shall be deemed necessary and appropriate (such items (i) and (ii) shall be referred to collectively herein as the “Loan Instruments”) by the Executive Director of the Trust (the “Authorized Officer”), or in his absence (with “absence” defined as being physically out of the State, on sick or vacation leave from the Trust, death, resignation or removal), the Chairman of the Trust, 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 Emergency Financing Program 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. Any Emergency Loan made by the Trust to a Borrower as part of the Emergency Financing Program (i) shall bear interest at a rate calculated pursuant to the Interest Rate Calculation, (ii) shall not exceed \$600,000 in principal amount, (iii) shall have a maturity date of not later than Maturity Date, (iv) shall not be subject to the imposition by the Trust of an administrative fee, and (v) shall be repaid by the Borrower from the Stated Source of Repayment.

Section 3. In addition to the requirements of Section 2 hereof, the Loan Instruments for a given Emergency Loan shall include a covenant obligation of the Borrower that it shall develop and implement an asset management plan with respect to the Project (the “Plan”). The terms and provisions of such covenant obligation of the Borrower with respect to the Plan shall (i) comply with Appendix A attached hereto and made a part hereof and (ii) be approved by the Authorized Officer as appropriate for inclusion in the Loan Instruments given the nature and scope of the Project, after consultation with Bond Counsel to the Trust and the Office of the Attorney General of the State.

Section 4. No Emergency Loan shall be made by the Trust to a Borrower pursuant to the Emergency Financing Program in connection with an Emergency Project without the prior approval of the Board in the form of a resolution duly adopted pursuant to and in satisfaction of the requirements of the Act (the “Authorizing Resolution”), provided that such Borrower and such Emergency Project each shall qualify for funding through the Emergency Financing Program pursuant to the terms and provisions of the Act and the Regulations and the terms and provisions of this Resolution, including, without limitation, the Emergency Financing Program Conditions Precedent and the Emergency Financing Program Conditions Subsequent. The Authorizing Resolution shall include, without limitation, the certification of such Borrower’s Emergency Project for funding in accordance with the provisions of N.J.A.C. 7:22-4.13, provided, however, that such Borrower’s Emergency Project previously has been certified for funding by the Commissioner pursuant to the provisions of N.J.S.A. 58:11B-9.1(b).

Section 5. At the meeting of the Board immediately following the execution and delivery of any Loan Instruments by the Trust relating to any Emergency Loan made by the Trust to any Borrower pursuant to the Emergency Financing Program, the Executive Director of the Trust shall provide a report to the Board concerning the details of such transaction.

Section 6. 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: May 12, 2011

Motion Made By: Mr. Briant

Motion Seconded By: Mr. Plonski

Ayes: 7

Nays: 0

Abstentions: 0

APPENDIX A