

## RESOLUTION NO. 11 - 28

### RESOLUTION OF THE NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST AUTHORIZING THE PLANNING AND DESIGN 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 a planning and design financing program (the “Planning and Design Financing Program”), to make loans (each a “Planning Loan”) to eligible project sponsors (each a “Borrower”) for the purpose of financing the allowable environmental planning and engineering design costs of environmental infrastructure projects (each a “Project”), provided that each such Planning Loan made by the Trust to a Borrower for a Project satisfies the requirements of the Act, including, without limitation, N.J.S.A. 58:11B-9.2, and any applicable Regulations; and

**WHEREAS**, the Act, specifically N.J.S.A. 58:11B-9.2, provides for the making of Planning Loans to Borrowers with respect to Projects that are included on the project priority lists for the ensuing fiscal year that has 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”), as well as Projects that are not included on the Priority List; and

**WHEREAS**, pursuant to the Act, the sources of funding for the Planning and Design Financing Program authorized hereby shall be (i) the Planning and Design Fund created by N.J.S.A. 58:11B-9.2(a) and (ii) the Interim Financing Program Fund created by N.J.S.A. 58:11B-9(d) (collectively, the “Available Funds”), provided that a Planning Loan made from moneys on deposit in the Interim Financing Program Fund may be made only with respect to a Project that is included on the Priority List; 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 Planning and Design Financing Program, pursuant to the parameters set forth herein, including, without limitation, the following conditions precedent that must be satisfied in full in connection with any Planning Loan made by the Trust to a qualifying Borrower for its Project: (i) the Borrower has submitted to the Trust and the New Jersey Department of Environmental Protection (the “NJDEP”) a complete Planning and Design Financing Program application with respect to the Project; (ii) the proposed scope of the Project has been certified for funding by the Trust through the Planning and Design Financing Program in accordance with N.J.A.C. 7:22-4.13; (iii) there exists sufficient Available Funds for the making of the Planning Loan; (iv) if the Project is on the Priority List, the Project is in the fundable range in the forthcoming funding cycle given the project's rank and the anticipated availability of NJDEP and Trust monies; and (v) the proposed Borrower has not previously received financing from the Trust or the NJDEP, through the Planning and Design Financing Program or

otherwise, for the same project scope (items (i) through (v) hereof shall be referred to collectively herein as the “Planning and Design Financing Program Conditions Precedent”); and

**WHEREAS**, it is the desire of the Trust to establish certain terms for each Planning Loan made by the Trust as part of the Planning and Design Financing Program authorized hereby.

**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 Planning and Design Financing Program, provided (i) such Planning and Design Financing Program shall be funded solely from the Available Funds, (ii) aggregate, outstanding Planning Loans shall not exceed \$2 million at any time, (iii) the availability to qualifying applicants of Planning Loans shall be prioritized based upon the chronological order of the certification of proposed Projects for funding through the Planning and Design Financing Program by the Trust in accordance with N.J.A.C. 7:22-4.13, (iv) Planning Loans shall fully comply with the provisions of the Act, the Regulations applicable thereto and the terms of this Resolution, including, without limitation, the Planning and Design Financing Program Conditions Precedent.

**Section 2.** Any Planning Loan made by the Trust as part of the Planning and Design 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 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 (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 Planning and Design 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 Planning Loan made by the Trust to a Borrower as part of the Planning and Design Financing Program:

(i) shall be funded solely from the Available Funds; provided that any Planning Loan made with respect to a Project that is not on the Priority List shall be funded solely from Available Funds other than amounts on deposit in the Interim Financing Program Fund established pursuant to N.J.S.A. 58:11B-9(d);

(ii) shall bear interest at a rate of (a) with respect to a Planning Loan made to (1) a local government unit (as such term is defined in the Act) or (2) a public water utility (as such term is defined in the Act) or small water company (as such term is defined in the Act), in each case, serving fewer than 10,000 residents, 0%, and (b) with respect to a Planning Loan made to (1) a public water utility or small water company, in each case, serving

greater than 10,000 residents, (2) any other private person, or (3) a local government unit on behalf of any private person, 2%;

(iii) shall not exceed \$500,000 in principal amount;

(iv) shall have a maturity date (the "Maturity Date") not later than (a) with respect to a Project included on the Priority List, the date of closing with respect to the State Fiscal Year 2013 New Jersey Environmental Infrastructure Financing Program as administered by the Trust and the NJDEP (the "Financing Program"), which shall be no later than June 30, 2013, and (b) with respect to a Project not included on the Priority List, the date of closing with respect to the applicable long-term financing within the State Fiscal Year 2014 Financing Program, which shall be no later than June 30, 2014;

(v) shall be repaid by the Borrower from the participation by the Borrower in 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; and

(vi) shall not be subject to the imposition by the Trust of an administrative fee.

**Section 3.** Prior to the making of a Planning Loan with respect to a Project that is included on the Priority List, the Authorized Officer shall certify the proposed scope of such Project for funding through the Planning and Design Financing Program in accordance with the provisions of N.J.A.C. 7:22-4.13, provided, however, that (i) the proposed scope of such Borrower's Project previously has been certified for funding by the Commissioner of the NJDEP pursuant to the provisions of N.J.A.C. 7:22-3.13, and (ii) such Project shall qualify for funding through the Planning and Design 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 Planning and Design Financing Program Conditions Precedent.

**Section 4.** No Planning Loan shall be made by the Trust to a Borrower with respect to a Project not included on the Priority List pursuant to the Planning and Design Financing Program 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 Project each shall qualify for funding through the Planning and Design 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 Planning and Design Financing Program Conditions Precedent. The Authorizing Resolution shall include, without limitation, the certification of the proposed scope of such Borrower's Project for funding in accordance with the provisions of N.J.A.C. 7:22-4.13, provided, however, that the proposed scope of such Borrower's Project previously has been certified for funding by the Commissioner of the NJDEP pursuant to the provisions of N.J.A.C. 7:22-3.13.

**Section 5.** The Authorized Officer is hereby 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 Planning and Design Financing Program.

**Section 6.** 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 7.** At the meeting of the Board immediately following the execution and delivery of any Loan Instruments by the Trust relating to any Planning Loan made by the Trust to any Borrower pursuant to the Planning and Design Financing Program, the Executive Director of the Trust shall provide a report to the Board concerning the details of such transaction.

**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: July 7, 2011

Motion Made By: Mr. Briant

Motion Seconded By: Mr. Barrack

Ayes: 7

Nays: 0

Abstentions: 0

**EXHIBIT A**  
**FORMS OF OBLIGATION**