

RESOLUTION NO. – 12-08

**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**

WHEREAS, pursuant to 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 amended and supplemented (N.J.S.A. 58:11B-1 *et seq.*) (the “Act”), the New Jersey Environmental Infrastructure Trust, a public body corporate and politic under the laws of the State, created pursuant to the Act (the “Trust”), 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, pursuant to N.J.S.A. 58:11B(9)(a), the Trust may establish loan terms and conditions as it deems necessary and such loans shall bear interest at a rate agreed upon by the Trust and loan recipients; and

WHEREAS, on June 8, 2006, the Board adopted Resolution No. 06-28 entitled “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” (the “Prior Resolution”), and it is the desire of the Trust to amend and restate in its entirety the Prior Resolution for the purpose of revising, amending and restating the Direct Loan Program Criteria (as herein after defined) as such Direct Loan Program Criteria is set forth herein; and

WHEREAS, each year, the Trust provides funding for qualifying Projects to qualifying Project Sponsors through the provision a Trust Loan, such Trust Loans being funded with the proceeds of the Environmental Infrastructure Bonds issued by the Trust pursuant to its annual Environmental Infrastructure Financing Program (the “Financing Program”); and

WHEREAS, as an alternative to the funding of a Project through the Financing Program, from time to time the Board of Directors of the Trust (the “Board”), by official action of the Board, determines that it is in the administrative interests of the Trust that a Project be financed as a so-called direct loan (each a “Direct Loan”) as part of the direct loan initiative of the Trust (the “Direct Loan Program”); and

WHEREAS, once the Board, by official action of the Board, has determined that a Project qualifies for funding through the Direct Loan Program of the Trust, such Project is financed with a combination of (i) the proceeds of a Direct Loan from the Trust and (ii) a loan (each a “NJDEP Loan”) from the New Jersey Department of Environmental Protection (the “NJDEP”); and

WHEREAS, a Direct Loan by the Trust to a qualifying and approved Project Sponsor pursuant to the Direct Loan Program is funded by the Trust from (i) investment earnings available to the Trust for such purposes and/or (ii) operating funds of the Trust that are not required for, or committed to, the operation of the Trust for the then current and immediately succeeding fiscal years; and

WHEREAS, the Trust has developed revised criteria for use by the Board for the purpose of identifying a Project that shall be appropriate for funding through the Direct Loan Program of the Trust, and such criteria (the "Direct Loan Program Criteria"), either one of which, or both collectively, may be deemed by the Board to be determinative, shall include the following: (i) the Direct Loan by the Trust to the Project Sponsor shall not exceed \$300,000 and (ii) the Project Sponsor shall be the subject of economic hardship and/or shall lack administrative staff and/or expertise in matters relating to the completion and the financing of the Project; and

WHEREAS, the rate of interest to be paid by the Project Sponsor to the Trust with respect to the repayment of the Direct 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 as set forth in this Amended and Restated Resolution and the market as of the date of closing for the Direct Loan: (i) the interest rate as determined, on the date of closing for the Direct Loan, by the Municipal Market Advisors pursuant to their Municipal Market Data (MMD) Index, (ii) plus (or minus) the number of basis points by which the interest rate on the most recently issued tax-exempt (non-AMT) Environmental Infrastructure Bonds issued by the Trust to provide new financing for Projects pursuant to the Financing Program (the "Bonds"), exceeded (or was less than) the MMD Index on the date on which such Bonds were sold, (iii) with such determination being made as a scale for each year of the life of the Direct Loan and thereupon converted into an average rate based upon the weighted average maturity schedule, thereby establishing level debt service comparable to the amortization of a mortgage loan; and

WHEREAS, from time to time, it may be determined by the Board that, pursuant to the Direct Loan Program Criteria, a Project qualifies for funding through the Direct Loan Program; however, the cost of such Project is *de minimis* and a Project cost of such a small amount can and should most efficiently be financed exclusively by the Trust through a Direct Loan by the Trust to the Project Sponsor, without the need for separate financial assistance from the NJDEP in the form of a NJDEP Loan by the NJDEP to the Project Sponsor; and

WHEREAS, the Trust has developed criteria for use by the Board for the purpose of identifying a Project that shall be appropriate for funding through the Direct Loan Program exclusively by the Trust through a Direct Loan by the Trust to the Project Sponsor, without the need for separate financial assistance from the NJDEP in the form of a NJDEP Loan by the NJDEP to the Project Sponsor, and such criteria (the "Direct Loan Program – Trust Loan Only Criteria") shall consist of the following: (i) the Project Sponsor shall satisfy the Direct Loan Program Criteria and, in addition, (ii) the Direct Loan by the Trust to the Project Sponsor shall not exceed \$70,000; and

WHEREAS, notwithstanding a determination by the Board, pursuant to the Direct Loan Program – Trust Loan Only Criteria, that a Project cost of such a small amount can and should

most efficiently be financed exclusively by the Trust through a Direct Loan by the Trust to the Project Sponsor, without the need for separate financial assistance from the NJDEP in the form of a NJDEP Loan by the NJDEP to the Project Sponsor, it is the desire of the Trust to provide to such Project Sponsors the same interest rate structure with respect to the Direct Loan from the Trust that such Project Sponsor would enjoy if it were to receive its financial assistance from both the Trust and the NJDEP through the Direct Loan Program or as part of the Financing Program, and, therefore, it is the intent of the Trust to establish an interest rate structure for the repayment of such Direct Loan to be extended exclusively by the Trust to such Project Sponsor through the Direct Loan Program that is consistent with an interest rate structure consisting of market rate interest on the repayment of financial assistance from the Trust and zero interest on the repayment of financial assistance from the NJDEP; and

WHEREAS, the rate of interest to be paid to the Trust by a Project Sponsor, deemed qualified by the Board for a Direct Loan pursuant to the Direct Loan Program – Trust Loan Only Criteria, with respect to the repayment of its Direct Loan extended by the Trust shall be calculated in the following manner (the “Interest Rate – Trust Loan Only Calculation”), so as to achieve an objectively determined rate of interest that is reflective of the policy goals as set forth in this Amended and Restated Resolution and the market as of the date of closing for the Direct Loan: (i) the interest rate as determined, on the date of closing for the Direct Loan, by Municipal Market Monitor (“TM3”) pursuant to their Municipal Market Data AAA tax-exempt yield curve (“MMD Index”), (ii) plus (or minus) the number of basis points by which the interest rate on the Bonds exceeded (or was less than) the MMD Index on the date on which such Bonds were sold, (iii) with such determination being made as a scale for each year of the life of the Direct Loan and thereupon converted into an average rate based upon the weighted average maturity schedule, thereby establishing level annual debt service and (iv) with such average rate thereupon being reduced by (A) fifty percent (50%) or (B) seventy-five percent (75%) consistent with Board approved Financing Program parameters; and

WHEREAS, it is the desire of the Board to restate and memorialize, as the policy of the Trust with respect to the implementation and administration of the Direct Loan Program, the following (collectively, the “Direct Loan Program Policy”): (i) Direct Loan Program Criteria; (ii) the Interest Rate Calculation; (iii) Direct Loan Program – Trust Loan Only Criteria; and (iv) Interest Rate – Trust Loan Only Calculation; and

WHEREAS, notwithstanding the restatement and memorialization of the Direct Loan Program Policy pursuant to the terms hereof, (i) the granting of any Direct Loan by the Trust pursuant to the Direct Loan Program and the Direct Loan Program Policy shall be subject to separate official action of the Board and (ii) at the time of the separate official action of the Board with respect to any Direct Loan by the Trust pursuant to the Direct Loan Program, the Board, by the terms of such official action, may elect to deviate from the Direct Loan Program Policy to the extent expressly identified and authorized in such official action of the Board.

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

Section 1. The Prior Resolution, including particularly the definition therein of the “Direct Loan Program Criteria”, is hereby amended in its entirety by the terms of this Amended and Restated Resolution.

Section 2. The Board hereby restates and memorializes, as the policy of the Trust with respect to the implementation and administration of the Direct Loan Program, the Direct Loan Program Policy.

Section 3. Notwithstanding the provisions of Section 2 of this Amended and Restated Resolution, (i) the granting of any Direct Loan by the Trust pursuant to the Direct Loan Program and the Direct Loan Program Policy shall be subject to separate official action of the Board and (ii) at the time of the separate official action of the Board with respect to any Direct Loan by the Trust pursuant to the Direct Loan Program, the Board, by the terms of such official action, may elect to deviate from the Direct Loan Program Policy to the extent expressly identified and authorized in such official action of the Board.

Section 4. The Direct Loan Program Policy may be further revised by the Board from time to time by means of an amendment to this Resolution.

Adopted Date: February 9, 2012

Motion Made By: Mr. Kreipke

Motion Seconded By: Mr. Gardner

Ayes: 7

Nays: 0

Abstentions: 0