

RESOLUTION NO. 14-05

SECOND AMENDED AND RESTATED RESOLUTION OF THE NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST AUTHORIZING THE STATE FISCAL YEAR 2014 NANO INFRASTRUCTURE 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 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, 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, the NJEIT has partnered with the New Jersey Department of Environmental Protection (the “NJDEP”) to make 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 NJEIFP 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

WHEREAS, Small Water Systems generally possess 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, and to ensure that such Small Water Systems satisfy the conditions precedent to participation in the Financing Program, including, without limitation, creditworthiness standards of the Financing Program; and

WHEREAS, notwithstanding the challenges for the Financing Program in assessing the credit risk associated with Small Water System loans, the NJDEP has concluded that continued NJEIFP loans to Small Water Systems to finance drinking water improvements are necessary and appropriate to address important public health issues for the affected communities; and

WHEREAS, it is the desire of the Trust to establish the Nano Infrastructure Loan Program (the “NLP”) to serve as the funding mechanism for improvements to Small Water Systems while also addressing the credit risks posed by such Financing Program applicants; and

WHEREAS, the Board of Directors of the Trust (the “Board”), on September 13, 2012, adopted that certain “Resolution of the New Jersey Environmental Infrastructure Trust Authorizing the State Fiscal Year 2014 Nano Infrastructure Loan Program” (Resolution No. 12-50) (the “Original Resolution”); and

WHEREAS, the Board , on October 17, 2013, adopted that certain “Amended and Restated Resolution of the New Jersey Environmental Infrastructure Trust Authorizing the State Fiscal Year 2014 Nano Infrastructure Loan Program” (Resolution No. 13-58) (the “First Amended Resolution”), which amended and restated in its entirety the Initial Resolution; and

WHEREAS, the Board now desires to amend and restate the First Amended Resolution in its entirety for the purpose of amending certain provisions of the First Amended Resolution in connection with the further development and implementation of the NLP.

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

Section 1. The Board hereby amends and restates the First Amended Resolution in its entirety pursuant to the terms and provisions hereof.

Section 2. The Board hereby authorizes the establishment of the SFY 2014 NLP, provided that each of the following NLP requirements is satisfied in full:

- (a) NLP loans made to qualifying Project Sponsors by the Trust and the NJDEP during SFY 2014 pursuant to the NLP shall not exceed \$4,000,000 in aggregate principal amount. In the event that less than \$4,000,000 in aggregate principal amount of NLP Loans are made in SFY 2014, any remaining NLP funds not utilized in SFY 2014 may be used by the Trust for the financing of other programs within the NJEIFP during State Fiscal Year 2014;
- (b) each NLP 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) a Trust Loan in the amount sufficient to finance twenty-five percent (25%) of the allowable costs of the applicable Project (the “Trust Loan Component”);
- (c) the Trust Loan Component of all NLP loans made to qualifying Project Sponsors by the Trust during SFY 2014 pursuant to the NLP shall not exceed \$1,000,000 in aggregate principal amount;

- (d) the total of all NLP loans for any given qualifying Project Sponsor for SFY2014 shall be no greater than \$1,000,000 and no less than \$100,000 in aggregate principal amount, and the allowable costs of any Project that is financed through the NLP that are in excess of \$1,000,000 shall be financed through the Financing Program in such matter as may be determined by an Authorized Officer (as hereinafter defined);
- (e) the source of funds for the Trust Loan Component of all NLP loans made by the Trust during SFY 2014 pursuant to the NLP 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 2014 and 2015 (“Available Funds”), and/or (ii) 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 NLP loans made by the Trust during SFY 2014, which Trust Bonds shall be issued pursuant to a bond resolution to be adopted by the Board prior to the issuance thereof;
- (f) the Trust Loan Component of each NLP Loan shall bear interest at a rate per annum 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”;
- (g) the Chairman, Vice Chairman and Executive Director 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 4 hereof), in the event that (A) the principal amount of the NLP loan for which such Project Sponsor currently is applying, together with (B) the aggregate principal amount of all other NLP 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 NLP 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 NLP loans of such Project Sponsor, multiplied by 2;
- (h) any applicant with respect to the NLP (in addition to satisfying all other SFY 2014 NJEIFP loan conditions) shall demonstrate that its Small Water System is (and shall continue to be) managed in a professional manner that is consistent with the Federal Fiscal Year 2013 Drinking Water Intended Use Plan;

- (i) NLP loan recipients shall not be subject to the imposition by the NJDEP of an administrative fee; and
- (j) NLP 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 NLP 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, 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 4 hereof.

Except as otherwise provided by this Resolution, as a condition precedent to the receipt by an applicant of an NLP loan, such applicant shall comply fully with each eligibility requirement that shall apply to any applicant for participation in the SFY 2014 NJEIFP.

Section 3. Any SFY 2014 NLP 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 SFY 2014 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) an 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 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 resolution, as applicable; (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 resolution, including, without limitation, its obligation to raise and collect annual fees and charges to the extent necessary to cover all operating, capital and debt service expenses in order to manage and operate its water supply system in good working condition;
- (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 3 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 the SFY 2014 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 4. Each NLP 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 NLP 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 NLP 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 NLP 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 NLP loan amounts, the NJDEP contribution to the LLR Fund in an amount equal to the excess outstanding NLP loan amount may, at the discretion of an Authorize Officer, be withdrawn from the LLR Fund and repaid to the NJDEP.

Section 5. 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 SFY 2014 NLP.

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. 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 SFY 2014 NLP and the transactions contemplated hereby.

Section 8. The NLP shall fully comply with the provisions of the Act, the Regulations applicable thereto and the terms of this Resolution.

Section 9. 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: February 20, 2014

Motion Made By: Mr. Briant

Motion Seconded By: Mr. Barrack

Ayes: 6

Nays: 0

Abstentions: 0