

RESOLUTION NO. 14-08

RESOLUTION OF THE NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST (I) CERTIFYING CERTAIN PROJECTS OF THE PASSAIC VALLEY SEWERAGE COMMISSIONERS FOR FINANCING THROUGH THE DISASTER RELIEF EMERGENCY FINANCING PROGRAM, (II) MAKING CERTAIN DETERMINATIONS WITH RESPECT TO A RELIEF LOAN TO THE PASSAIC VALLEY SEWERAGE COMMISSIONERS, AND (III) AUTHORIZING OTHER NECESSARY AND INCIDENTAL ACTION IN CONNECTION THEREWITH

WHEREAS, the New Jersey Environmental Infrastructure Trust (the “Trust”), pursuant to and in accordance with 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”), is authorized, pursuant to a Disaster Relief Emergency Financing Program, also known as the “Statewide Assistance Infrastructure Loan Program” or “SAIL”, to make loans (each, a “Relief Loan”) to eligible project sponsors (each, a “Borrower”) for the purpose of financing the allowable costs of eligible environmental infrastructure projects (each, a “Project”), provided that each such Relief Loan made by the Trust to a Borrower and each such Project satisfies the requirements of the Act; and

WHEREAS, the Board of Directors of the Trust (the “Board”) established the terms, requirements and parameters of SAIL pursuant to Resolution No. 13-73, duly adopted by the Board on December 12, 2013 and entitled “Second Amended and Restated Resolution of the New Jersey Environmental Infrastructure Trust Authorizing the Disaster Relief Emergency Financing Program” (the “SAIL Program Resolution”; capitalized terms used and not otherwise defined herein shall have the respective meanings ascribed thereto in the SAIL Program Resolution); and

WHEREAS, the SAIL Program Resolution set forth the Relief Funding Eligibility Conditions that must be satisfied prior to the making of a Relief Loan by the Trust to a Borrower for a Project, which Relief Funding Eligibility Conditions include, without limitation, the certification of the Project by the Board; and

WHEREAS, the Passaic Valley Sewerage Commissioners (“PVSC”), a public body corporate and politic with corporate succession duly created and validly existing pursuant to N.J.S.A. 58:14-1 *et seq.*, as amended and supplemented (the “PVSC Act”), has applied to the Trust for financing through SAIL, in an aggregate principal amount not to exceed \$200,000,000, with respect to PVSC projects identified in the Projects Priority List set forth in the NJEIT State Fiscal Year 2015 January Report (collectively, the “PVSC Projects”); and

WHEREAS, PVSC currently is operating pursuant to the provisions of the PVSC Act and Executive Order 55 (Christie 2011) (“EO 55”), pursuant to which Governor Christie declared and proclaimed a State of Emergency to exist within PVSC; and

WHEREAS, pursuant to Executive Order 104 (Christie 2012) (“EO 104”), enacted immediately prior to Superstorm Sandy, Governor Christie (i) declared and proclaimed a State of Emergency to exist in the State of New Jersey and activated the emergency powers of the Governor established pursuant to the Civilian Defense Disaster Control Act of 1942, as amended, and (ii) pursuant to Section 8 of EO 104, reserved the right “to utilize and employ all available resources of the State Government and of each and every political subdivision of the State, whether of persons, properties, or instrumentalities, and to commandeer and utilize any personal services and any privately owned property necessary to protect against this emergency;” and

WHEREAS, the Trust desires to certify the PVSC Projects for financing through SAIL pursuant to the provisions of the Act and the SAIL Program Resolution, subject to the receipt by the Trust of the certification thereof by the Commissioner of the NJDEP; and

WHEREAS, the Trust desires to extend a Relief Loan to PVSC (the “PVSC Relief Loan”) in an aggregate principal amount not to exceed \$20,000,000, provided that, upon the repayment or prepayment of any portion of the PVSC Relief Loan, PVSC shall be permitted to draw upon such repaid or prepaid amounts for the payment of additional costs of the PVSC Projects as may be approved by the Chairman, the Vice Chairman or the Executive Director of the Trust (each, an “Authorized Officer”), and provided further that (i) the aggregate amount of all draws upon the account to be established by the Trust for purposes of disbursing proceeds of the PVSC Relief Loan (the “PVSC Relief Loan Account”) shall not exceed \$200,000,000, and (ii) the aggregate outstanding principal amount of the PVSC Relief Loan shall not at any time exceed \$20,000,000; and

WHEREAS, \$15 million of the total principal amount of the PVSC Relief Loan shall be financed by the Trust with monies received by the Trust pursuant to the Appropriation, and up to \$5 million of the aggregate principal amount of the PVSC Relief Loan shall be financed by the Trust with Available Trust Revenues; provided, further, that, notwithstanding the provisions of Section 6(iv) of the SAIL Program Resolution to the contrary, it is the desire of the Trust that the PVSC Relief Loan shall bear interest in the following manner (the “Interest Rate Calculation”): (i) The PVSC Relief Loan or any portion thereof consisting of monies received by the Trust pursuant to the Appropriation shall bear interest at 0%; and (ii) any remaining portion of the PVSC Relief loan that shall be shall be financed by the Trust with Available Trust Revenues shall bear interest at a rate of interest that shall be determined by an Authorized Officer, which rate of interest may be 0% or any rate of interest that shall not exceed the rate of interest determined as provided by Section 6(iv)(c) of the SAIL Program Resolution, which rate of interest as provided by clauses (i) and (ii) herein may be calculated as an average to be applied to 100% of the PVSC Relief Loan; and

WHEREAS, it is the desire of the Trust that the PVSC Relief Loan to PVSC shall not be extended by the Trust to PVSC until such time as PVSC demonstrates to the Trust satisfaction of the following conditions precedent (collectively, the “PVSC Relief Loan Conditions”): (i) PVSC shall have satisfied all of the Relief Funding Eligibility Conditions as identified in the SAIL Program

Resolution; (ii) PVSC shall have satisfied, to the extent that it procedurally is capable of doing so, all requirements and conditions precedent as set forth in the PVSC Act that relate to the issuance by PVSC of an Obligation (the "PVSC Obligation"), which PVSC Obligation shall evidence and secure the repayment obligation of PVSC to the Trust with respect to the PVSC Relief Loan; (iii) PVSC shall have satisfied, to the extent that it procedurally is capable of doing so, all requirements and conditions precedent as set forth in the PVSC Act that relate to the authorization, execution and delivery by PVSC of the Loan Instruments (the "PVSC Loan Instruments"), which PVSC Loan Instruments shall include, without limitation, terms and provisions that shall (A) disclose, memorialize, represent and warrant that, at such time in the future when PVSC no longer need rely upon the provisions of EO 55 (due to the cessation of the emergency circumstances identified and set forth therein), PVSC shall replicate and ratify all requirements and conditions precedent as set forth in the PVSC Act that relate to (1) the issuance by PVSC of the PVSC Obligation with respect to its PVSC Relief Loan and (2) the authorization, execution and delivery by PVSC of the PVSC Loan Instruments (collectively, the "Ratification Provisions"), (B) pledge to the repayment of the PVSC Relief Loan all reimbursements that may be received by or on behalf of PVSC from the United States Federal Emergency Management Agency and/or the United States Department of Housing and Urban Development in connection with the PVSC Projects (the "Pledge Provisions"), and (C) require that PVSC keep accurate records and accounts for its environmental infrastructure system and that such records and accounts be audited annually by an independent registered municipal accountant or independent certified public accountant, and a copy of such annual audit therefor, including all written comments and recommendations of such accountant, shall be furnished to the Trust within 150 days of the close of the fiscal year being so audited or, with the consent of the Trust, such additional period as may be provided by law; (iv) PVSC shall have satisfied all requirements and conditions precedent as set forth in EO 55 that relate to the issuance by PVSC of the PVSC Obligation, including, without limitation, the procurement by PVSC of the prior written approval by the Governor's Authorities Unit with respect to the issuance by PVSC of the PVSC Obligation; (v) PVSC shall have satisfied all requirements and conditions precedent as set forth in EO 55 that relate to the authorization, execution and delivery by PVSC of the PVSC Loan Instruments, inclusive of the Ratification Provisions and the Pledge Provisions; and (vi) the Trust shall have received a legal opinion of counsel to PVSC, in form and substance satisfactory to an Authorized Officer, after consultation with Bond Counsel to the Trust and the Office of the Attorney General of the State; and

WHEREAS, it is the desire of the Trust that the PVSC Relief Loan to PVSC shall not be extended by the Trust to PVSC until such time as further amendments and supplements to the current creditworthiness policy of the Trust (the "Trust Creditworthiness Policy") have been implemented by the Trust, which further amendments and supplements to the Trust Creditworthiness Policy (the "Trust Creditworthiness Policy Amendments") shall provide as follows: In the event that an Event of Default occurs pursuant to the terms of any agreement for financial assistance (a "Defaulted Loan") between the Trust and a borrower (a "Defaulting Borrower"), (i) such Defaulting Borrower shall be deemed non-compliant with the then-current Trust Creditworthiness Policy and, therefore, shall be ineligible for any form of future financial assistance from any of the financing programs of the Trust, and (ii) the administrative fee, if any, imposed by the Trust upon the Defaulting Borrower pursuant to the terms of each and every then

outstanding Trust loan, in addition to and other than the Defaulted Loan, shall be increased by the Trust to the maximum percentage permitted by the terms of the particular financing program pursuant to which each such Trust loan has been made, and, furthermore, upon the cure of such Event of Default (whether by payment in full upon acceleration by the Trust, payment in full by the Defaulting Borrower of all unpaid amounts due (i.e., cure), or as otherwise may be satisfactory to the Board), the Defaulting Borrower shall again be eligible for future financial assistance from the Trust, provided that (i) such Defaulting Borrower otherwise complies with the Trust Creditworthiness Policy, and (ii) such Defaulting Borrower shall be required to make an annual deposit equal to 1.00% of the outstanding aggregate principal amount of its current and any future Trust loans into a special reserve fund, to be held by the Trust for the benefit of such Defaulting Borrower, and in the event such special reserve fund is not drawn upon to secure the payment of debt service, the amounts deposited therein shall be used by the Trust to make the final debt service payments on the Defaulting Borrower's Trust loan(s).

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

Section 1. Subject to the prior receipt by the Trust of the certification thereof by the Commissioner of the NJDEP, the Board hereby certifies the PVSC Projects for financing pursuant to SAIL in accordance with the provisions of the Act and the SAIL Program Resolution.

Section 2. The Board hereby authorizes and approves the PVSC Relief Loan by the Trust to PVSC for the purpose of financing the PVSC Projects, pursuant to and in accordance with the terms and provisions of the Act, the SAIL Program Resolution and this Resolution, and subject to the prior satisfaction in full by PVSC of the PVSC Relief Loan Conditions and the prior implementation by the Trust of the Trust Creditworthiness Policy Amendments. The Board hereby further determines that the PVSC Relief Loan shall be made by the Trust to PVSC in an aggregate principal amount not to exceed \$20,000,000, provided that, upon the repayment or prepayment of any portion of the PVSC Relief Loan, PVSC shall be permitted to draw upon such repaid or prepaid amounts for the payment of additional costs of the PVSC Projects as may be approved by an Authorized Officer, and provided, further, that (i) the aggregate amount of all draws upon the PVSC Relief Loan Account shall not exceed \$200,000,000, and (ii) the aggregate outstanding principal amount of the PVSC Relief Loan shall not at any time exceed \$20,000,000.

Section 3. The Board hereby determines that seventy-five percent (75%) of the aggregate principal amount of the PVSC Relief Loan shall be financed with monies received by the Trust pursuant to the Appropriation, and twenty-five percent (25%) of the aggregate principal amount of the PVSC Relief Loan shall be financed with Available Trust Revenues. Notwithstanding the provisions of Section 6(iv) of the SAIL Program Resolution to the contrary, the Board hereby further determines that the PVSC Relief Loan shall bear interest pursuant to the Interest Rate Calculation.

Section 4. Any Authorized Officer is hereby authorized and directed to execute such documents and to take such other actions that such Authorized Officer, in his respective sole

discretion after consultation with the Professional Advisors, deems necessary, convenient or desirable to effect the transactions contemplated hereby.

Section 5. The Resolution shall take effect immediately, subject to the provisions of the Act.

Adopted Date: February 20, 2014

Motion Made By: Mr. Barrack

Motion Seconded By: Ms. Siekerka

Ayes: 6

Nays: 0

Abstentions: 0

Summary Report:	
Litéra® Change-Pro TDC 7.0.0.365 Document Comparison done on 2/20/2014 9:01:46 AM	
Style Name: McCarter	
Original DMS: iw://WORKSITE/ME1/17189440/2	
Modified DMS: iw://WORKSITE/ME1/17189440/3	
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Delete	4
Move From	0
<u>Move To</u>	0
<u>Table Insert</u>	0
Table Delete	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format Changes	0
Total Changes:	9