

## RESOLUTION NO. 16 – 19

### RESOLUTION OF THE NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST AUTHORIZING THE STATE FISCAL YEAR 2016 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 (the “Trust”), a public body corporate and politic under the laws of the State created pursuant to the Act, 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**, the Board of Directors of the Trust (the “Board”) desires to establish the Small System Loan Program also known as the Nano Infrastructure Loan Program, (the “SSLP” or “Nano program”), for State Fiscal Year 2016 (“SFY2016”) to serve as the funding mechanism for improvements to Small Water Systems while also addressing the credit risks posed by such Financing Program applicants.

**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 SFY2016 SSLP, provided that each of the following SSLP requirements is satisfied in full:

- (a) SSLP loans made to qualifying Project Sponsors by the Trust and the NJDEP during SFY 2016 pursuant to the SSLP shall not exceed \$4,000,000 in aggregate principal amount. In the event that less than \$4,000,000 in aggregate principal amount of SSLP Loans are made in SFY 2016, any remaining SSLP funds not utilized in SFY2016 may be used by the Trust for the financing of other programs within the NJEIFP during SFY2016;
- (b) other than as set forth in paragraph (c) below, each SSLP 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) SSLP Loans in an amount not to exceed \$500,000 (which amount shall be a portion of the total SSLP authorized amount of \$4,000,000 set forth in paragraph (a) above), may be made to Small Water Systems serving populations of 500 or fewer ("Very Small Water Systems"), and shall consist of an NJDEP principal forgiveness loan in the amount of one hundred percent (100%) of the allowable costs of the applicable Project;
- (c) the Trust Loan Component of all SSLP loans made to qualifying Project Sponsors by the Trust during SFY2016 pursuant to the SSLP shall not exceed \$1,000,000 in aggregate principal amount;
- (d) the total of all SSLP loans for any given qualifying Project Sponsor for SFY2016 shall be no greater than \$1,000,000 and, other than with respect to a Project Sponsor that is a very Small Water System, no less than \$100,000 in aggregate principal amount, and the allowable costs of any Project that is financed through the SSLP 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 SSLP loans made by the Trust during SFY2016 pursuant to the SSLP 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 2016 and 2017 ("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 SSLP loans made by the Trust during SFY2016, which Trust Bonds shall be

issued pursuant to a bond resolution to be adopted by the Board prior to the issuance thereof;

- (f) unless otherwise authorized or directed by the Board, the Trust Loan Component of each SSLP Loan shall bear interest at a rate per annum equal to the rate of the bonds issued by the Trust or as 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 SSLP loan for which such Project Sponsor currently is applying, together with (B) the aggregate principal amount of all other SSLP 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 SSLP 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 SSLP loans of such Project Sponsor, multiplied by 2;
- (h) any applicant with respect to the SSLP (in addition to satisfying all other SFY2016 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 2016 Drinking Water Intended Use Plan;
- (i) SSLP loan recipients shall not be subject to the imposition by the NJDEP of an administrative fee; and
- (j) SSLP 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 SSLP loan, but (i) shall be subject to an annual Trust administrative fee for loan servicing in the annual amount of 0.15% of the original principal amount of the combined Trust Loan and Fund Loan components, 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 SSLP loan, such applicant shall comply fully with each eligibility requirement that shall apply to any applicant for participation in the SFY2016 NJEIFP.

**Section 2.** Any SFY2016 SSLP 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 SFY2016 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 SFY2016 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 3.** Each SSLP 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 SSLP 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 SSLP 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 SSLP 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 SSLP loan amounts, the NJDEP contribution to the LLR Fund in an amount equal to the excess outstanding SSLP loan amount may, at the discretion of an Authorized 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 SFY2016 SSLP.

**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 SFY2016 SSLP and the transactions contemplated hereby.

**Section 8.** The SSLP 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: May 12, 2016

Motion Made By: James Requa

Motion Seconded By: Michael Griffin

Ayes: 5

Nays: 0

Abstentions: 0