

RESOLUTION NO. 17 - 38

**THIRD AMENDED AND RESTATED RESOLUTION OF
THE NEW JERSEY ENVIRONMENTAL INFRASTRUCTURE TRUST
AUTHORIZING THE DISASTER RELIEF EMERGENCY FINANCING PROGRAM**

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, provided that each such Relief Loan made by the Trust satisfies the requirements of the Act; and

WHEREAS, pursuant to the provisions of the Act, a proposed project sponsor is eligible to be a Borrower for a Relief Loan for purposes of financing the allowable costs of the eligible environmental infrastructure project (the “Project”) of such Borrower pursuant to SAIL, provided each of the following conditions (collectively, the “SAIL Funding Eligibility Conditions”) is satisfied in full: (i) the Commissioner of the New Jersey Department of Environmental Protection (the “NJDEP”) has determined and certified in writing that the Project is necessary and appropriate to (a) repair damage to a wastewater treatment system or water supply facility directly arising from an act of terrorism, seismic activity or weather conditions that occurred within the three State Fiscal Years after a declaration by the Governor of the State (the “Governor”) of a state of emergency, provided that such wastewater treatment system or water supply facility is located in a county included in the Governor’s state of emergency declaration, or (b) mitigate the risk of future damage to a wastewater treatment system or water supply facility from an act of terrorism, seismic activity or weather conditions comparable in scope and severity to an act of terrorism, seismic activity or weather conditions that occurred within the three State Fiscal Years that gave rise to a declaration by the Governor of a state of emergency, provided that such wastewater treatment system or water supply facility is located in a county included in the Governor’s state of emergency declaration; (ii) the Project is listed on the Disaster Relief Emergency Financing Program Eligibility List for funding submitted to the Legislature in a form provided by the Commissioner of the NJDEP no more than three years after the conditions that gave rise to a declaration by the Governor of a state of emergency; (iii) the proposed Borrower has submitted a complete application for the Project to the Trust; (iv) the Board of Directors of the Trust has certified the Project; and (v) the proposed Borrower has not previously received a Relief Loan through SAIL for the same project scope; and

WHEREAS, it is the desire of the Trust, subject to the terms and provisions of the Act and this Resolution, to authorize the implementation of SAIL; and

WHEREAS, in order to provide a source of funding for the implementation of SAIL, there has been appropriated to the Trust (the “Appropriation”), subject to the approval of the Commissioner

of the NJDEP, (a) funds pursuant to the Disaster Relief Appropriations Act of 2013 (Public Law 113-2), (b) repayments of loans deposited in any account, including, without limitation, the Clean Water State Revolving Fund Accounts contained within the “Wastewater Treatment Fund”, the “1992 Wastewater Treatment Fund”, the “Water Supply Fund”, and the “Stormwater Management and Combined Sewer Overflow Abatement Fund”, the Drinking Water State Revolving Fund, and (c) net earnings received from the investment and reinvestment of such deposits; and such sums shall be deposited, upon the approval of the Commissioner of the NJDEP, in the segregated fund created by the Trust pursuant to the Act for the purpose of funding SAIL; and

WHEREAS, in addition to the funds made available to the Trust pursuant to the Appropriation for purposes of SAIL, it is the desire of the Trust to provide, as additional sources of funding for SAIL, (i)(a) net earnings with respect to funds held by the Trust, which available Trust revenues may be made available by the Trust to Borrowers participating in SAIL at the election of an Authorized Officer (as hereinafter defined), and (b) operating funds of the Trust that are not required for, or committed to, the operations of the Trust for State Fiscal Years 2018, 2019 and 2020 (collectively, the “Available Trust Revenues”); and (ii) amounts drawn upon a line of credit or similar financial instrument procured by the Trust from a commercial bank or such other similar lending institution, pursuant to the terms of this Resolution (the “Line of Credit”; the Appropriation, the Available Trust Revenues and the Line of Credit shall be referred to collectively herein as the “Available Funds”); and

WHEREAS, the Board of Directors of the Trust, on June 13, 2013, adopted that certain “Resolution of the New Jersey Environmental Infrastructure Trust Authorizing the Disaster Relief Emergency Financing Program” (Resolution No. 13-33) (the “Initial Resolution”); and

WHEREAS, the Board of Directors of the Trust, on August 8, 2013, adopted that certain “Amended and Restated Resolution of the New Jersey Environmental Infrastructure Trust Authorizing the Disaster Relief Emergency Financing Program” (Resolution No. 13-47) (the “First Amended Resolution”), which amended and restated in its entirety the Initial Resolution; and

WHEREAS, the Board of Directors of the Trust, on December 12, 2013, adopted that certain “Second Amended and Restated Resolution of the New Jersey Environmental Infrastructure Trust Authorizing the Disaster Relief Emergency Financing Program” (Resolution No. 13-73) (the “Second Amended Resolution”), which amended and restated in its entirety the First Amended Resolution; and

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

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

Section 1. The Board of Directors of the Trust hereby amends and restates the Second Amended Resolution in its entirety pursuant to the terms and provisions hereof; and

Section 2. The Board of Directors of the Trust authorizes the establishment of SAIL, provided (i) SAIL shall be funded solely from the Available Funds, (ii) SAIL shall comply fully with the provisions of the Act applicable thereto and the terms of this Resolution, and (iii) Relief Loans shall not exceed \$5,000,000,000 in aggregate outstanding principal amount. Notwithstanding the provisions hereof to the contrary, the Available Trust Revenues shall be made available to SAIL for the following funding purposes only: (a) the funding of Small System Relief Loans (as hereinafter defined), provided that the outstanding aggregate principal amount of such Small System Relief Loans shall not exceed \$5,000,000, (b) the Trust Contribution (as hereinafter defined), and (c) such other Relief Loans as shall be necessary or appropriate to advance the purposes of the Act or this Resolution.

Section 3. In furtherance of the implementation of SAIL, the Board of Directors of the Trust hereby authorizes the expenditure by the Trust of Available Trust Revenues of up to \$200,000 per State Fiscal Year in State Fiscal Year 2018, 2019 and 2020 in order to fund all or a portion of the (i) underwriting fees and costs of issuance incurred by the Trust in connection with the implementation and administration of SAIL and (ii) Relief Loan interest costs of Borrowers by up to 50% of the market rate (the allocations of Available Trust Revenues as described in clauses (i) and (ii) hereof shall be referred to herein as the "Trust Contribution"), the commitment and allocation of such \$200,000 as between the purposes described in clauses (i) and (ii), above, and as among various Borrowers pursuant to clause (ii) above, being subject to the discretion of the Chairman or Vice Chairman of the Trust or the approval of the Board of Directors of the Trust at the request of the Chairman or Vice Chairman of the Trust.

Section 4. The Board of Directors of the Trust hereby authorizes the establishment of a Debt Service Reserve Fund (the "DSRF") for the purpose of securing the repayment by each Borrower of its Relief Loan on time and in full. The DSRF shall be funded in an amount and from sources (including, without limitation, (i) bond act funds appropriated to the Trust for the purposes of reserves and/or guarantees and/or (ii) Available Trust Revenues as shall be determined by the Chairman, the Vice Chairman or the Executive Director of the Trust (each, an "Authorized Officer").

Section 5. Any Relief Loan made by the Trust as part of SAIL shall be evidenced by (i) a note or other appropriate obligation of the Borrower to be issued to the Trust, all in satisfaction of the requirements of the Act (the "Obligation"), and (ii) any other documentation (including, without limitation, an escrow agreement, an assignment agreement, and/or a loan agreement) as shall be deemed necessary and appropriate by an Authorized Officer in furtherance of the making and securing of a Relief Loan pursuant to the provisions of this Resolution, after consultation with Bond Counsel to the Trust and the Office of the Attorney General of the State (collectively, the "Loan Instruments"). Each Obligation and any Loan Instrument shall be in substantially 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 SAIL as shall be determined by an 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 applicable Regulations and (ii) the implementation of the terms of this Resolution.

Section 6. Each Relief Loan made by the Trust to a Borrower for a Project pursuant to SAIL:

- (i) shall be made only if the Borrower and the Project have satisfied in full the SAIL Funding Eligibility Conditions;
- (ii) The rate of interest to be paid by a Borrower to the Trust with respect to the repayment of a Relief 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 (i) the policy goals of the Trust as set forth in this Resolution and (ii) the market as of the date on which the Relief Loan is made by the Trust to the Borrower, provided, however, that the portion of the Relief Loan that shall finance the NJDEP loan origination fee may be determined by an Authorized Officer, at his or her discretion, to bear interest at a rate of 0.00% as an alternative to the rate of interest that otherwise would be applicable to that portion of the Relief Loan pursuant to the provisions of this Section:
 - (a) with respect to any portion of a Relief Loan made from amounts made available to the Trust pursuant to the Appropriation, 0.00%;
 - (b) with respect to any portion of a Relief Loan made from Available Trust Revenues to a local government unit (as such term is defined in the Act), the interest rate as defined by an appropriate general obligation tax-exempt market index, as shall be selected by an Authorized Officer, which options for selection may include, without limitation, (i) the Thompson Financial TM3 “AAA” Municipal Market Data General Obligation Index (Tax Exempt) and (ii) the “BVAL” Index (relating to general obligation, tax exempt credits) of Bloomberg L.P. (or any subsidiary thereof), in any case for the number of years that corresponds to the term consisting of the period from the date of a given disbursement of proceeds of the Relief Loan to the maturity date of the Relief Loan, rounded up to the nearest year;
 - (c) with respect to any portion of a Relief Loan made from Available Trust Revenues to a public water utility (as such term is defined in the Act), a small water company (as such term is defined in the Act), any other private person, or a local government unit on behalf of any private person, the interest rate as defined by an appropriate alternative minimum tax market index, as shall be selected by an Authorized Officer, which options for selection may include, without limitation, (i) the Thompson Financial TM3 “AAA” Municipal Market Data General Obligation Index (AMT) and (ii) the “BVAL” Index (relating to alternative minimum tax credits) of Bloomberg L.P. (or any subsidiary thereof), in any case for the number of years that corresponds to the term consisting of the period from the date of a

given disbursement of proceeds of the Relief Loan to the maturity date of the Relief Loan, rounded up to the nearest year; and

- (d) with respect to any portion of a Relief Loan made from amounts made available to the Trust pursuant to a Credit Instrument, a rate to be determined by the Trust in connection with its approval of any such Credit Instrument as required, which rate shall be commensurate with the cost to the Trust of obtaining funds pursuant to such Credit Instrument for the purpose of making such Relief Loan or portion thereof.

For purposes of determining the term in order to perform the Interest Rate Calculation, as set forth above, the Authorized Officers shall calculate such term as commencing on the date of disbursement and continuing to, but not including, the maturity date of such Relief Loan, rounding up to the nearest year.

- (v) shall not exceed such principal amount as determined by the Commissioner of the NJDEP;
- (vi) may, at the sole discretion of the Commissioner of the NJDEP, to the extent any such Relief Loan is an Appropriation Loan, be subject to principal forgiveness in an amount as shall be determined by the Commissioner of the NJDEP;
- (vii) shall have a maturity date of the date of closing with respect to the applicable long-term financing program of the Trust and the NJDEP, occurring no later than the last day of the third succeeding State Fiscal Year following the closing date on which such Relief Loan is made; provided, however, that each Relief Loan may be subject to prepayment, in whole or in part, prior to the maturity date;
- (viii) shall not be subject to the imposition of an administrative fee; and
- (ix) shall otherwise qualify for funding through SAIL pursuant to the terms and provisions of the Act and provisions of this Resolution.

Section 7. The Board of Directors of the Trust hereby further authorizes the making of a Relief Loan from Available Trust Revenues only, pursuant to the provisions of the Act and this Resolution, (a “Small System Relief Loan”) to an otherwise qualified Borrower that is a private drinking water utility or a privately owned drinking water system (including, without limitation, private water supply companies, nonprofit corporations and homeowners associations) that (i) does not possess an investment grade rating from one of the three national rating agencies and (ii) serves a customer population of less than 10,000, provided that no single such Small System Relief Loan exceeds \$1 million in principal amount, and satisfies the credit worthiness standards as set forth in the Trust’s Credit Policy, and all such Small System Relief Loans, in the aggregate, shall not exceed \$5,000,000 in principal amount.

Section 8. Each Authorized Officer is 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 Borrower in SAIL.

Section 9. 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 10. At the meeting of the Board of Directors of the Trust immediately following the execution and delivery of any Trust Loan Instruments relating to any Relief Loan made to any Borrower pursuant to SAIL, the Executive Director of the Trust shall provide a report to the Board of Directors of the Trust concerning the details of SAIL.

Section 11. Each Authorized Officer is hereby severally authorized and directed to prepare and distribute, in consultation with Bond Counsel to the Trust, the Office of the Attorney General of the State and the Financial Advisor to the Trust (collectively, the "Professional Advisors"), a Request for Qualifications (the "RFQ"), to banking corporations or other similar lending institutions, to submit qualifications for consideration by the Trust in establishing a pool of firms (hereafter the "Underwriter Pool") eligible to participate in the Trust's Line of Credit Contract procurement as defined below. Such RFQ shall be prepared and distributed pursuant to and in compliance with Trust Policy and Procedure No. 4.00, entitled "Procurement of Goods and Services." The Underwriter Pool shall be awarded upon authorization by official action of the Board of Directors of the Trust at a future meeting thereof.

Section 13. 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 the Professional Advisors, deems necessary, convenient or desirable to affect the transactions contemplated hereby.

Section 14. The Resolution shall take effect immediately, subject to the provisions of the Act.

Adopted Date: June 15, 2017

Motion Made By: Tim Cunningham

Motion Seconded By: Dan Kennedy

Ayes: 5

Nays: 0

Abstentions: 0