

RESOLUTION NO. 20 - 06

**RESOLUTION OF THE NEW JERSEY INFRASTRUCTURE BANK
AUTHORIZING THE WATER BANK CONSTRUCTION FINANCING PROGRAM
FOR STATE FISCAL YEAR 2021**

WHEREAS, the New Jersey Infrastructure Bank (the "I-Bank"), pursuant to and in accordance with (i) the "New Jersey 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"), 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"), is authorized, pursuant to an interim financing program for the I-Bank's New Jersey Water Bank (the "Water Construction Financing Program"), to make loans (each, a "Construction Loan") to eligible project sponsors (each, a "Borrower") for the purpose of financing the allowable costs of environmental infrastructure projects (each, a "Project"), provided that each such Construction Loan made by the I-Bank to any such Borrower satisfies the requirements of the Act, including, without limitation, N.J.S.A. 58:11B-9(d), and the Regulations, including, without limitation, N.J.A.C. 7:22-4.47; and

WHEREAS, pursuant to the terms and provisions of N.J.A.C. 7:22-4.47, a proposed project sponsor is eligible to be a Borrower for a Construction Loan for purposes of financing the allowable costs of the Project of such Borrower pursuant to the Water Construction Financing Program, provided each of the following conditions is satisfied in full: (i) the Project is listed on the project priority list that has been submitted to the State Legislature pursuant to N.J.S.A. 58:11B-20 or N.J.S.A. 58:11B-20.1 (the "Priority List"); (ii) the proposed Borrower has submitted a complete application for the Project in accordance with N.J.A.C. 7:22-4.11; (iii) the proposed Borrower has complied with the I-Bank's Credit Policy, as then in effect pursuant to formal adoption by the I-Bank; (iv) the Project (or, at a minimum, an operable segment thereof) has been certified for funding by the I-Bank in accordance with N.J.A.C. 7:22-4.13; (v) the Project is in the fundable range in the forthcoming funding cycle given the Project's rank and the anticipated availability of New Jersey Department of Environmental Protection ("NJDEP") and I-Bank monies; and (vi) the proposed Borrower has not previously received a Construction Loan through the Water Construction Financing Program for the same project scope (exclusive of a Construction Loan made solely for the purpose of extending the term of a prior Construction Loan or for a Supplemental Short Term Loan pursuant to N.J.S.A. 58:11B-9(d)), which conditions, shall be collectively referred to herein as the "Water Construction Financing Program Conditions Precedent"; and

WHEREAS, it is the desire of the I-Bank, subject to the terms and provisions of (i) the Act, (ii) the Regulations and (iii) this Resolution, to authorize the implementation for State Fiscal Year 2021 ("SFY2021") of the Water Construction Financing Program for the New Jersey Water Bank of the I-Bank (the "SFY2021 Water Construction Financing Program"); and

WHEREAS, in order to provide a source of funding for the implementation of the SFY2021 Water Construction Financing Program, it is anticipated that the New Jersey State Legislature and the Governor of the State will enact into law an appropriation act (the "Appropriation") that will appropriate to the I-Bank, from repayments of New Jersey Water Bank 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", the "Stormwater Management and Combined Sewer Overflow Abatement Fund", or the Drinking Water State Revolving Fund, as appropriate, and from any net earnings received from the investment and reinvestment of such deposits, the sum of \$500,000,000, such sum to be deposited in the segregated fund created by the I-Bank for the purpose of funding the SFY2021 Water Construction Financing Program; and

WHEREAS, in addition to the funds made available to the I-Bank pursuant to the Appropriation for purposes of the SFY2021 Water Construction Financing Program, it is the desire of the I-Bank to provide, as additional sources of funding for the SFY2021 Water Construction Financing Program, (i) net earnings with respect to New Jersey Water Bank funds held by the I-Bank and (ii) New Jersey Water Bank operating funds of the I-Bank that are not required for, or committed to, the New Jersey Water Bank operations of the I-Bank for State Fiscal Years 2021 and 2022 (collectively, the "Available I-Bank Revenues"), which Available I-Bank Revenues may be made available by the I-Bank, up to a maximum of \$500,000 per Borrower and at the discretion of an Authorized Officer (as defined in Section 2 hereof), to any Borrowers participating in the SFY2021 Water Construction Financing Program; and

WHEREAS, with respect to the SFY2021 Water Construction Financing Program of the I-Bank and other future construction financing programs of the I-Bank for the New Jersey Water Bank (collectively, the "Current and Future Water Construction Financing Programs"), it is the desire of the I-Bank to explore, as an additional source of funding for the Current and Future Water Construction Financing Programs, the procurement by the I-Bank of one or more financing vehicles, including, without limitation, a revolving line of credit or other similar financial instrument, either through a competitive or negotiated process, from one or more financial institutions (the "Credit Instrument"; the Appropriation, the Available I-Bank Revenues and the Credit Instrument shall be referred to collectively herein as the "Available Funds"), and in furtherance of such exploration, the I-Bank, through its Authorized Officers, desires to (i) discuss and explore potential structural, collateral and credit features relating to a Credit Instrument with one or more financial institutions, and/or (ii) prepare and distribute one or more Requests for Qualifications or Requests for Proposals, seeking proposals from qualified providers of a Credit Instrument; and

WHEREAS, it is the desire of the I-Bank that, if a Borrower is eligible to receive financing from the SFY2021 Water Construction Financing Program for a Project that includes multiple operable segments, the Borrower may receive a single, combined Construction Loan for such Project, provided that (i) the Borrower has submitted to the I-Bank and the NJDEP a complete application with respect to the Project, including each operable segment of such Project, (ii) the I-Bank shall not be obligated to disburse any Available Funds pursuant to such Construction Loan with respect to any operable segment of a given Project until such operable segment and the Project costs

applicable thereto shall have been certified by the NJDEP, and (iii) the Borrower otherwise satisfies each of the other applicable requirements of the Act and the Regulations applicable thereto and the applicable terms of this Resolution; and

WHEREAS, it is the desire of the I-Bank to establish such additional terms and provisions of the SFY2021 Water Construction Financing Program, including, without limitation, (i) the interest rate applicable to each Construction Loan made as part of the SFY2021 Water Construction Financing Program, (ii) the maturity with respect to each Construction Loan made as part of the SFY2021 Water Construction Financing Program, and (iii) all fees applicable to each Construction Loan made as part of the SFY2021 Water Construction Financing Program and the Project financed thereby, all in a manner consistent with the applicable provisions of (i) the Act and (ii) the Regulations.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the New Jersey Infrastructure Bank (the "Board"), as follows:

Section 1. Authorization, Establishment and Implementation of the SFY2021 Water Construction Financing Program. The Board hereby authorizes and directs the establishment and implementation of the SFY2021 Water Construction Financing Program, subject to compliance by the I-Bank with each of the following requirements:

- (a) Each Construction Loan made pursuant to the SFY2021 Water Construction Financing Program shall be funded solely from the Available Funds applicable thereto and available therefor, as and to the extent provided in the preambles hereof. The Authorized Officers are each hereby severally authorized and directed, after consultation with the Professional Advisors (as defined in Section 11 hereof), to determine the particular Available Funds that shall be allocated to, and shall be the source of funding for, any given Construction Loan made pursuant to the SFY2021 Water Construction Financing Program.
- (b) Each Construction Loan made pursuant to the SFY2021 Water Construction Financing Program, and each Project (including each operable segment thereof) funded thereby, shall comply fully with the terms and provisions of the Act and the Regulations applicable thereto, as well as the applicable terms and provisions of this Resolution.
- (c) No Construction Loan shall be made pursuant to the SFY2021 Water Construction Financing Program unless and until the Water Construction Financing Program Conditions Precedent applicable to a given Borrower and Project have been satisfied, in full, in satisfaction of the requirements of the Act, the Regulations and this Resolution.
- (d) Each Construction Loan made pursuant to the SFY2021 Water Construction Financing Program shall be made pursuant to the terms and provisions of the Loan Instruments,

as defined in Section 2 hereof, which Loan Instruments shall include and address the requirements hereof, including, without limitation, those requirements as set forth in Sections 3, 4 and 5 hereof.

Section 2. The Loan Instruments and the Terms and Provisions Thereof. Any Construction Loan made by the I-Bank as part of the SFY2021 Water Construction Financing Program shall be evidenced by (i) a note or other appropriate obligation of the Borrower to be issued by the Borrower to the I-Bank (the "Obligation") in order to evidence and secure such Borrower's Construction Loan repayment obligation and other obligations, and (ii) any other documentation as shall be deemed necessary and appropriate (the instruments identified in clauses (i) and (ii) hereof shall be referred to collectively herein as the "Loan Instruments") by the Chairperson of the I-Bank, the Vice Chairperson of the I-Bank, The Secretary of the I-Bank, and/or the Executive Director of the I-Bank, or any other person or persons designated by the Board by resolution to act on behalf of the I-Bank, but in each case subject to the limitations of the by-laws of the I-Bank (each, an "Authorized Officer"), after consultation with Bond Counsel to the I-Bank and the Office of the Attorney General of the State (collectively, the "Legal Counsel"). Each Obligation shall be in substantially the applicable form attached hereto as Exhibit A, with such revisions and modifications thereto as shall be approved by an Authorized Officer after consultation with Legal Counsel, with such approval by the Authorized Officer of such revisions and modifications thereto being evidenced by the signed receipt of such Obligation by such Authorized Officer. The Loan Instruments shall include such terms and provisions relating to the SFY2021 Water Construction Financing Program as shall be determined by an Authorized Officer, after consultation with Legal Counsel, as being necessary and appropriate in connection with (i) the satisfaction of the requirements of the Act and the Regulations applicable thereto and (ii) the implementation of the applicable terms and provisions of this Resolution, including, without limitation, each of the following terms and provisions:

- (a) Each Construction Loan shall be in the stated principal amount as determined in accordance with Section 3 hereof;
- (b) Each Construction Loan shall bear interest at a rate that shall be determined in accordance with the Interest Rate Calculation (as defined in Section 4 hereof);
- (c) Each Construction Loan shall have a maturity date that shall be no later than the applicable date set forth in Section 5 hereof;
- (d) Each Construction Loan shall be subject to the imposition of a fee (the "Administrative Fee"), in connection with the NJDEP loan origination fee applicable to a given Project, in such amount as shall be set forth in and calculated pursuant to the Financial Plan (as hereinafter defined); and
- (e) The Loan Instruments with respect to each Construction Loan shall include, as applicable, terms and provisions relating to the funding of a Project with multiple operable segments via a single Construction Loan and the proper disbursement of such Construction Loan proceeds for the funding of each Project operable segment.

Section 3. Principal Amount. The principal amount of each Construction Loan (and the stated principal amount of the Obligation issued by the Borrower in connection with such Construction Loan), made as part of the SFY2021 Water Construction Financing Program, shall not exceed \$15,000,000, unless a higher principal amount thereof is authorized by official action of the Board at a future meeting thereof. For purposes of determining, at any time, the outstanding principal amount of a Construction Loan (and the Obligation issued by the Borrower in connection therewith), such outstanding principal amount shall equal the aggregate of all disbursements of proceeds thereof for Project costs that have been made by the I-Bank as of the date of such determination, inclusive of the Administrative Fee.

Section 4. Interest Rate Calculation. The rate of interest to be paid by a Borrower to the I-Bank with respect to the repayment of a Construction Loan made as part of the SFY2021 Water Construction Financing Program (the "Interest Rate Calculation") shall be calculated by an Authorized Officer at such times and in a manner consistent with (i) the terms and provisions of the then-applicable Financial Plan, as prepared for each State Fiscal Year and as submitted to the State Legislature by the I-Bank, all pursuant to, and in satisfaction of the requirements of, Sections 21, 21.1, 22 and 22.1 of the Act (the "Financial Plan") and (ii) the terms and provisions of the Obligation evidencing such Construction Loan, provided that the formula for the Interest Rate Calculation shall be established by official action of the Board at a future meeting thereof. Such Interest Rate Calculation shall be reflective of the policy goals of the I-Bank as set forth in this Resolution and the market as of the respective dates on which the Interest Rate Calculation is performed.

Section 5. Maturity Date. The maturity date with respect to any Construction Loan made as part of the SFY2021 Water Construction Financing Program, including any disbursement made pursuant thereto, shall not exceed the maximum maturity that is permitted pursuant to the provisions of N.J.S.A. 58:11B-9(d), as such provisions may hereafter be amended and supplemented from time to time.

Section 6. Delegation as to Approval of Borrowers. The Authorized Officers are each hereby severally authorized and directed, after consultation with Legal Counsel, to approve, in his or her sole discretion, the participation of a Borrower in the SFY2021 Water Construction Financing Program, provided that such Borrower qualifies for such participation pursuant to the terms and provisions of the Act and the Regulations applicable thereto and the applicable terms and provisions of this Resolution, including, without limitation, satisfaction by such Borrower of the applicable Water Construction Financing Program Conditions Precedent.

Section 7. Delegation as to Project Certification. Prior to the making of any Construction Loan with respect to any Project pursuant to the SFY2021 Water Construction Financing Program, the Authorized Officers are each hereby severally authorized and directed to certify such Project for funding through the SFY2021 Water Construction Financing Program in accordance with the provisions of N.J.A.C. 7:22-4.13; provided, however, that as a condition precedent to such certification by an Authorized Officer, (i) the proposed Project, or at least one operable segment thereof (as provided pursuant to the terms and provisions of Section 8 hereof),

previously has been certified for funding by the Commissioner of the NJDEP, and (ii) such proposed Project (including each of the operable segments thereof) shall otherwise qualify for funding through the SFY2021 Water Construction Financing Program pursuant to the terms and provisions of the Act and the Regulations applicable thereto and the applicable terms and provisions of this Resolution.

Section 8. Operable Segments of a Project. In the event that a portion, but not all, of a Project that is to be the subject of a Construction Loan pursuant to the SFY2021 Water Construction Financing Program has been certified for funding by the Commissioner of the NJDEP, the Authorized Officers are each hereby severally authorized and directed to extend a Construction Loan to such Borrower for such Project in a stated principal amount that may equal, but shall not exceed, the total estimated allowable costs of such Project (subject to the further limitations set forth in the Act, the applicable Regulations and this Resolution, including, without limitation, Section 5 of this Resolution); provided, however, that the Loan Instruments relating to such Construction Loan shall provide that the I-Bank shall not disburse to the Borrower any proceeds of such Construction Loan with respect to those costs of the Project that have not been certified by the Commissioner of the NJDEP, and such prohibition upon the disbursement by the I-Bank to the Borrower of such proceeds of the Construction Loan shall continue to apply until such date as such costs have been certified by the Commissioner of the NJDEP.

Section 9. Delegation as to Execution of Documents. Each Authorized Officer is hereby severally authorized and directed to execute (i) any Loan Instrument to which the I-Bank is a party (the "I-Bank Loan Instruments") and (ii) any certificates, instruments or documents contemplated therein or otherwise related to the participation of any Borrower in the SFY2021 Water Construction Financing Program. Upon execution of the I-Bank Loan Instruments by an Authorized Officer, the Secretary and the Assistant Secretary of the I-Bank are each hereby severally authorized and directed, where required, to attest to the signature of such Authorized Officer, thereon and on any certificates, instruments or documents contemplated therein or related thereto.

Section 10. Report to the Board. At the next meeting of the Board during the month immediately following the execution and delivery of the Loan Instruments relating to a Construction Loan made by the I-Bank to a Borrower pursuant to the SFY2021 Water Construction Financing Program, the Executive Director of the I-Bank shall provide a report to the Board concerning the details of such transaction.

Section 11. Delegation as to Certain Actions Relating to the Procurement of a Credit Instrument. Each Authorized Officer is hereby severally authorized and directed to take such actions that such Authorized Officer, in his or her respective sole discretion, after consultation with Legal Counsel and the Financial Advisor to the I-Bank (collectively, the "Professional Advisors"), deems necessary, convenient or desirable in order to undertake and complete the following with respect to the anticipated procurement by the I-Bank of a Credit Instrument:

- (a) Engage in discussions with one or more financial institutions for the purpose of exploring potential structural, collateral and credit features relating to a Credit

Instrument in favor of the I-Bank for the purpose of funding all or a portion of one or more of the Current and Future Water Construction Financing Programs, and include in such discussions, at the discretion of such Authorized Officer, one or more of the Professional Advisors; and/or

- (b) Prepare and distribute, in consultation with the Professional Advisors, one or more Requests for Qualifications or Requests for Proposals (each, the "Credit Instrument RFP") to financial institutions for the establishment of a Credit Instrument in favor of the I-Bank for the purpose of funding all or a portion of one or more of the Current and Future Water Construction Financing Programs, in such amount as shall be determined by such Authorized Officer to be necessary and appropriate for such purpose. Each such Credit Instrument RFP shall be prepared and distributed pursuant to and in compliance with I-Bank Policy and Procedure No. 4.00, entitled "Procurement of Goods and Services".

The award of any contract to any financial institution that has submitted to the I-Bank a response to a Credit Instrument RFP shall be made only upon the prior authorization by official action of the Board at a future meeting thereof, at which the specific structural, collateral and credit features of the Credit Instrument shall be presented to the Board.

Section 12. Further Action. Any Authorized Officer is hereby authorized and directed to take such other actions that such Authorized Officer, in his or her respective sole discretion after consultation with Legal Counsel, deems necessary, convenient or desirable to affect the transactions contemplated hereby.

Section 13. Effective Date. 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, 2020

Motion Made By: Ms. Kimberly Holmes

Motion Seconded By: Mr. Jack Kocsis

Ayes: 7

Nays: 0

Abstentions: 0

EXHIBIT A

FORMS OF OBLIGATION

[NAME OF MUNICIPALITY]
NOTE
RELATING TO:
THE WATER BANK CONSTRUCTION FINANCING PROGRAM
OF THE NEW JERSEY INFRASTRUCTURE BANK

\$ _____, 201_

NJWB - CFP-20-__

FOR VALUE RECEIVED, _____, a municipal corporation duly created and validly existing pursuant to the laws of the State (as hereinafter defined), and its successors and assigns (the "Borrower"), hereby promises to pay to the order of the **NEW JERSEY INFRASTRUCTURE BANK**, a public body corporate and politic with corporate succession, duly created and validly existing under and by virtue of the Act (as hereinafter defined) (the "I-Bank"), the Principal (as hereinafter defined), together with all unpaid accrued Interest (as hereinafter defined), fees, late charges and other sums due hereunder, if any, in lawful money of the United States of America, on the Maturity Date (as hereinafter defined) or the date of any optional prepayment or acceleration in accordance with the provisions of this note (this "Note"); provided, however, that portions of the Interest may be due and payable earlier, at the time(s) and in the amount(s), as and to the extent provided in accordance with Section 4 hereof.

SECTION 1. Definitions. As used in this Note, unless the context requires otherwise, the following terms shall have the following meanings:

"Act" means the "New Jersey Infrastructure Trust Act", constituting Chapter 334 of the Pamphlet Laws of 1985 of 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.

"Administrative Fee" means the "NJDEP Fee" as defined and calculated in Exhibit B hereto, which is an administrative fee that is payable by the Borrower to the NJDEP (at the time and in the amount as is established by the provisions of Section 4(b) hereof) as a portion of the Cost of the Project that has been incurred by the Borrower for engineering and environmental services provided to the Borrower by the NJDEP.

"Anticipated Financing Program" means the New Jersey Water Bank financing program of the I-Bank, pursuant to which the I-Bank will issue its I-Bank Bonds for the purpose of financing, on a long-term basis, the Project as well as other projects of certain qualifying borrowers.

"Anticipated Long-Term Loan" means the long-term loan made by the I-Bank to the Borrower from the proceeds of its I-Bank Bonds, as part of the Anticipated Financing Program.

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"Authorized Officer" means any person authorized by the Borrower or the I-Bank, as the case may be, to perform any act or execute any document relating to the Loan or this Note.

“Code” means the Internal Revenue Code of 1986, as the same may from time to time be amended and supplemented, including any regulations promulgated thereunder, any successor code thereto and any administrative or judicial interpretations thereof.

“Cost” or **“Costs”** means those costs that are allocable to the Project, as shall be determined on a project-specific basis in accordance with the Regulations, as further set forth in Exhibit B hereto, (i) as such Exhibit B shall be supplemented by an Authorized Officer of the I-Bank by means of either a substitute Exhibit B or an additional Exhibit B, such supplement to be implemented concurrently with the supplement to Exhibit A-1 hereto (as provided in the definition of “Project” as set forth herein), and (ii) as the then-current Exhibit B may be amended by subsequent changes to eligible costs as evidenced by a certificate of an Authorized Officer of the I-Bank.

“Credit Policy” means the “New Jersey Infrastructure Bank Credit Policy,” as adopted by the Board of Directors of the I-Bank and as further amended and supplemented from time to time.

“Environmental Infrastructure Facilities” means Wastewater Treatment Facilities, Stormwater Management Facilities or Water Supply Facilities (as such terms are defined in the Regulations).

“Environmental Infrastructure System” means the Environmental Infrastructure Facilities of the Borrower, including the Project, for which the Borrower is receiving the Loan.

“Event of Default” means any occurrence or event specified in Section 6 hereof.

“Financial Plan” means the then-applicable Financial Plan, as prepared for the then-current State Fiscal Year and as submitted to the State Legislature by the I-Bank and the NJDEP, all pursuant to, and in satisfaction of the requirements of, sections 21, 21.1, 22 and 22.1 of the Act.

“I-Bank Bonds” means the revenue bonds of the I-Bank to be issued pursuant to, and as part of, the Anticipated Financing Program.

“Interest” means the interest that shall accrue on a daily basis with respect to Principal to be calculated each day by applying the Interest Rate established for a State Fiscal Year divided by 360 to the Principal amount on that day.

“Interest Rate” means the rate of interest as shall be established by an Authorized Officer of the I-Bank in a manner consistent with the terms and provisions of the Financial Plan for each State Fiscal Year.

“Issue Date” means the date of issuance of this Note.

“Loan” means the loan of the Principal, made by the I-Bank to the Borrower to finance or refinance a portion of the Cost of the Project, as evidenced and secured by this Note.

“Loan Disbursement Requisition” means the requisition, to be executed by an Authorized Officer of the Borrower and approved by the NJDEP, in a form to be determined by the I-Bank and the NJDEP.

“Maturity Date” means the Maturity Date as determined pursuant to clause (i) (ii) or (iii) of this definition, subject to being redetermined pursuant to clause (iv) or (v) of this definition, but subject, in all events, to the rights and remedies of the I-Bank pursuant to the provisions of Section 6 hereof and the provisions of Section 7 hereof in furtherance of the enforcement by the I-Bank of all covenants and obligations of the Borrower hereunder, including, without limitation and in particular, the covenants and obligations of the Borrower set forth in Section 3 hereof.

(i) If the construction contract relating to the Project has not been certified for funding pursuant to the Act by the date that is the second anniversary of the Issue Date, then the Maturity Date shall be the second anniversary of the Issue Date. If this clause (i) is applicable, then the Maturity Date shall be _____, being the second anniversary of the Issue Date.

(ii) If the construction contract relating to the Project has been certified for funding pursuant to the Act prior to the Issue Date, then the Maturity Date shall be June 30 of the third State Fiscal Year following the State Fiscal Year in which the Issue Date occurs, which is June 30, 20___. In the event that there is more than one construction contract relating to the Project, the determination under this clause (ii) shall be based on the first construction contract that has been certified for funding pursuant to the Act.

(iii) If the construction contract relating to the Project has been certified for funding pursuant to the Act after the Issue Date and on or before the date that is the second anniversary of the Issue Date, then the Maturity Date shall be June 30 of the third State Fiscal Year following the State Fiscal Year in which the construction contract relating to the Project has been certified for funding pursuant to the Act. In the event that there is more than one construction contract relating to the Project, the determination under this clause (iii) shall be based on the first construction contract that has been certified for funding pursuant to the Act. Thus:

- (A) If this clause (iii) is applicable, and if the first construction contract relating to the Project has been certified for funding in the same State Fiscal Year as the State Fiscal Year during which the Issue Date occurs, then the Maturity Date shall be June 30, 20___, being June 30 of the third State Fiscal Year following the State Fiscal Year during which the Issue Date occurs.
- (B) If this clause (iii) is applicable, and if the first construction contract relating to the Project has been certified for funding in the first State Fiscal Year following the State Fiscal Year during which the Issue Date occurs, then the Maturity Date shall be June 30, 20___, being June 30 of the third State Fiscal Year following the State Fiscal Year in which the construction contract has been certified for funding.
- (C) If this clause (iii) is applicable, and if the first construction contract relating to the Project has been certified for funding in the second State Fiscal Year following the State Fiscal Year during which the Issue Date occurs (but on or before the second anniversary of the Issue Date), then the Maturity Date shall be June 30, 20___, being June 30 of the third State Fiscal Year following the State Fiscal Year in which the construction contract has been certified for funding.

(iv) Notwithstanding any of the foregoing, the Maturity Date shall be such earlier date as shall be determined by an Authorized Officer of the I-Bank in his or her sole discretion, which date shall be determined by such Authorized Officer of the I-Bank to be the date of the closing for the Anticipated Financing Program;

(v) Notwithstanding any of the foregoing, the Maturity Date shall be such later date (subject to the then-applicable limits of the Act) to be determined by an Authorized Officer of the I-Bank in his or her sole discretion, pursuant to a written certification thereof, as acknowledged and agreed by an Authorized Officer of the Borrower.

“New Jersey Water Bank” means the joint initiative of the I-Bank and the NJDEP to provide low-cost financing to qualified applicants with respect to water quality projects that are identified in the Act.

“NJDEP” means the New Jersey Department of Environmental Protection.

“Payment Date” means, as applicable: (i) the Maturity Date or (ii) with respect to any optional prepayment or acceleration of the Loan pursuant to the terms of this Note, the date of such optional prepayment or acceleration; provided, however, that in all cases, a portion of the Interest shall be payable by the Borrower to the I-Bank prior to the Maturity Date as provided in Section 4 hereof.

“Principal” means the principal amount of the Loan, at any time being the lesser of (i) _____ Dollars (\$ _____), or (ii) the aggregate outstanding amount as shall actually be disbursed to the Borrower by the I-Bank pursuant to one or more Loan Disbursement Requisitions, which Principal shall be payable by the Borrower to the I-Bank (i) on the Maturity Date or (ii) with respect to any optional prepayment or acceleration of the Loan pursuant to the terms of this Note, on the date of such optional prepayment or acceleration, as the case may be.

“Project” means the Environmental Infrastructure Facilities of the Borrower which constitute a project for which the I-Bank is making the Loan to the Borrower, as further described in Exhibit A-1 hereto; provided, however, that the description of the Project, as set forth in Exhibit A-1 attached hereto, may be supplemented by means of either (i) the substitution of a revised and updated Exhibit A-1 for the current Exhibit A-1 or (ii) the inclusion of an additional Exhibit A-1, in either case, promptly following the certification for funding by the NJDEP of the remaining components of the Project, as applicable, such supplement to be undertaken by an Authorized Officer of the I-Bank.

“Regulations” means the rules and regulations, as applicable, now or hereafter promulgated pursuant to N.J.A.C. 7:22-3 *et seq.*, 7:22-4 *et seq.*, 7:22-5 *et seq.*, 7:22-6 *et seq.*, 7:22-7 *et seq.*, 7:22-8 *et seq.*, 7:22-9 *et seq.* and 7:22-10 *et seq.*, as the same may from time to time be amended and supplemented.

“State” means the State of New Jersey.

SECTION 2. Representations of the Borrower. The Borrower hereby represents and warrants to the I-Bank, as follows:

(a) Organization. The Borrower: (i) is a municipal corporation duly created and validly existing under and pursuant to the Constitution and laws of the State; (ii) has full legal right and authority to execute, attest, issue and deliver this Note, to sell this Note to the I-Bank, and to perform its obligations hereunder; and (iii) has duly authorized, approved and consented to all necessary action to be taken by the Borrower for: (A) the issuance of this Note, the sale thereof to the I-Bank and the due performance of its obligations hereunder and (B) the execution, delivery and due performance of all certificates and other instruments that may be required to be executed, delivered and performed by the Borrower in order to carry out and give effect to this Note.

(b) Authority. This Note has been duly authorized by the Borrower and duly executed, attested and delivered to the I-Bank by Authorized Officers of the Borrower. This Note has been duly issued by the Borrower and duly sold by the Borrower to the I-Bank and constitutes a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms, except as the enforcement thereof may be affected by bankruptcy, insolvency or other similar laws or the application by a court of legal or equitable principles affecting creditors’ rights.

(c) Pending Litigation. There are no proceedings pending or, to the knowledge of the Borrower, threatened against or affecting the Borrower that, if adversely determined, would adversely affect (i) the condition (financial or otherwise) of the Borrower, (ii) the ability of the Borrower to satisfy all of its Loan repayment obligations hereunder, (iii) the authorization, execution, attestation or delivery of this Note, (iv) the issuance of this Note and the sale thereof to the I-Bank, and (v) the Borrower’s ability otherwise to observe and perform its duties, covenants, obligations and agreements under this Note, including, without limitation, the undertaking and completion of the Project.

(d) Compliance with Existing Laws and Agreements; Governmental Consent. (i) The due authorization, execution, attestation and delivery of this Note by the Borrower and the issuance and sale of this Note to the I-Bank, (ii) the observation and performance by the Borrower of its duties, covenants, obligations and agreements hereunder, including, without limitation, the repayment of the Loan and all other amounts due hereunder, and (iii) the undertaking and completion of the Project, will not (A) other than the lien, charge or encumbrance created by this Note and by any other outstanding debt obligations of the Borrower that are at parity with this Note as to lien on, and source and security for payment thereon from, the general tax revenues of the Borrower, result in the creation or imposition of any lien, charge or encumbrance upon any properties or assets of the Borrower pursuant to, (B) result in any breach of any of the terms, conditions or provisions of, or (C) constitute a default under, any existing ordinance or resolution, outstanding debt or lease obligation, trust agreement, indenture, mortgage, deed of trust, loan agreement or other instrument to which the Borrower is a party or by which the Borrower, its Environmental Infrastructure System or any of its properties or assets may be bound, nor will such action result in any violation of the provisions of the charter, applicable law or other document

pursuant to which the Borrower was established or any laws, ordinances, injunctions, judgments, decrees, rules, regulations or existing orders of any court or governmental or administrative agency, authority or person to which the Borrower, its Environmental Infrastructure System or its properties or operations are subject. The Borrower has obtained all permits and approvals required to date by any governmental body or officer for the authorization, execution, attestation and delivery of this Note, for the issuance and sale of this Note to the I-Bank, for the making, observance and performance by the Borrower of its duties, covenants, obligations and agreements under this Note, including, without limitation, the undertaking and completion of the Project (provided that, with respect to the undertaking and completion of the Project, such permits and approvals are obtainable by the Borrower as of the date hereof).

(e) I-Bank Credit Policy. The Borrower is in full compliance with the applicable requirements of the Credit Policy as in effect on the date hereof.

(f) Reliance. The Borrower hereby acknowledges that the I-Bank is making the Loan to the Borrower pursuant to the terms hereof in reliance upon each of the representations of the Borrower set forth in this Section 2.

SECTION 3. Covenants of the Borrower.

(a) Participation in the Anticipated Financing Program. The Borrower covenants and agrees that it shall undertake and complete in a timely manner all conditions precedent identified by the I-Bank relating to (i) the participation by the Borrower in the Anticipated Financing Program and (ii) the qualification by the Borrower for receipt of the Anticipated Long Term Loan.

(b) Full Faith and Credit Pledge. To secure the repayment obligation of the Borrower with respect to this Note, and all other amounts due under this Note (including, without limitation, the payment of the Administrative Fee in the amount and at the time as required by the provisions of Section 4(b) hereof), the Borrower unconditionally and irrevocably pledges its full faith and credit and covenants to exercise its unlimited taxing powers for the punctual payment of any and all obligations and amounts due under this Note. The Borrower acknowledges that, to assure the continued operation and solvency of the I-Bank, the I-Bank may, pursuant to and in accordance with Section 12a of the Act, require that if the Borrower fails or is unable to pay promptly to the I-Bank in full any Loan repayments, any Interest or any other amounts due pursuant to this Note, an amount sufficient to satisfy such deficiency shall be paid by the State Treasurer to the I-Bank from State-aid otherwise payable to the Borrower.

(c) Disposition of Environmental Infrastructure System. The Borrower covenants and agrees that it shall not sell, lease, abandon or otherwise dispose of all or substantially all of its Environmental Infrastructure System without the express written consent of the I-Bank, which consent may or may not be granted by the I-Bank in its sole discretion.

(d) Financing With Tax-Exempt Bonds. The Borrower acknowledges, covenants and agrees that it is the intention of the Borrower to finance the Project, in whole or in part, on a long-term basis with proceeds of I-Bank Bonds now or hereinafter issued, the interest on which is excluded from gross income for purposes of federal income taxation pursuant to Section 103(a) of

the Code (“tax-exempt bonds”). In furtherance of such long-term financing with tax-exempt bonds, the Borrower covenants that, except to the extent expressly permitted in writing by the I-Bank, in its sole discretion, the Borrower will not take any action or permit any action to be taken which would result in any of the proceeds of the Loan being used (directly or indirectly) (i) in any “private business use” within the meaning of Section 141(b)(6) of the Code, (ii) to make or finance loans to persons other than the Borrower, or (iii) to acquire any “nongovernmental output property” within the meaning of Section 141(d)(2) of the Code. In addition, the Borrower covenants and agrees that no portion of the Project will be investment property, within the meaning of Section 148(b) of the Code. The Borrower covenants and agrees that any Costs of the Borrower’s Project to be paid or reimbursed with proceeds of the Loan will result in the expenditure of proceeds under Treasury Regulations §1.148-6(d) and Treasury Regulations §1.150-2.

(e) Operation and Maintenance of Environmental Infrastructure System. The Borrower covenants and agrees that it shall maintain its Environmental Infrastructure System in good repair, working order and operating condition, and make all necessary and proper repairs and improvements with respect thereto.

(f) Records and Accounts; Inspections. The Borrower covenants and agrees that it shall keep accurate records and accounts for its Environmental Infrastructure System, separate and distinct from its other records and accounts, which shall be audited annually by an independent registered municipal accountant and shall be made available for inspection by the I-Bank upon prior written notice. The Borrower covenants and agrees that it shall permit the I-Bank (and any party designated thereby to act on its behalf or to assist it, including, without limitation, its professional advisors), at any and all reasonable times during construction of the Project and, thereafter, upon prior written notice, (i) to visit, inspect and examine the property constituting the Project and the site on which the Project is located, and (ii) to inspect (and make and retain copies of) any Borrower accounts, books, records, correspondence and files, including, without limitation, Borrower records regarding contracts, receipts, disbursements, investments and the overall financial standing of the Borrower, and any other matters related to the Borrower, the Project and the foregoing list of deliverables. In furtherance of the intent of this subsection, the Borrower covenants and agrees that it shall promptly prepare and provide such written reports and informational summaries as the I-Bank may reasonably require.

(g) Insurance. The Borrower covenants and agrees that it shall maintain insurance policies providing against risk of direct physical loss, damage or destruction of its Environmental Infrastructure System, in an amount that will satisfy all applicable regulatory requirements. The Borrower covenants and agrees that it shall include, or cause to be included, the I-Bank as an additional “named insured” on any certificate of liability insurance procured by the Borrower and by any contractor or subcontractor for the Project.

(h) Reliance. The Borrower hereby acknowledges that the I-Bank is making the Loan to the Borrower pursuant to the terms hereof in reliance upon each of the covenants of the Borrower set forth in this Section 3.

SECTION 4. Disbursement of the Loan Proceeds; Amounts Payable; Prepayment; and Late Fee.

(a) The I-Bank shall effectuate the Loan to the Borrower by making one or more disbursements to the Borrower promptly after receipt by the I-Bank of a Loan Disbursement Requisition and the approval of such Loan Disbursement Requisition by an Authorized Officer of the I-Bank, or a designee thereof, each such disbursement and the date thereof to be recorded and maintained by an Authorized Officer of the I-Bank, or a designee thereof, in the records of the I-Bank with respect to the Loan; provided, however, that the approval by the I-Bank of any Loan Disbursement Requisition for disbursement pursuant to the terms hereof shall be subject to the terms, conditions and limitations as set forth in Section 4(d) of this Note. It is expected that the proceeds of the Loan will be disbursed to the Borrower in accordance with the schedule set forth in Exhibit C hereto, as Exhibit C shall be supplemented by an Authorized Officer of the I-Bank by means of either a substitute Exhibit C or an additional Exhibit C, such supplement to be implemented concurrently with the supplement to Exhibit A-1 hereto (as provided in the definition of "Project" as set forth herein). The latest date upon which the Borrower may submit to the I-Bank a Loan Disbursement Requisition is the business day immediately preceding the date fixed by the I-Bank for the sale of its I-Bank bonds in connection with the Anticipated Financing Program, or such alternative date as shall be identified by the I-Bank for the Borrower in writing.

(b) Notwithstanding the provisions of Section 4(a) to the contrary, the Borrower hereby acknowledges and agrees, as follows: (i) to the extent that all or a portion of the Interest is funded by the Loan (as provided pursuant to Exhibit B hereto, as Exhibit B may hereafter be amended or supplemented as provided by the provisions hereof), payment of such Interest shall be made to the I-Bank via one or more disbursements by the I-Bank hereunder, at the times and in the amounts, as and to the extent provided in one or more written notices provided to the Borrower pursuant to the terms hereof by an Authorized Officer of the I-Bank, or a designee thereof, and each such disbursement shall be recorded by an Authorized Officer of the I-Bank or a designee thereof, and maintained in the records of the I-Bank with respect to the Loan; and (ii) on the date of issuance of this Note, a disbursement shall be made and shall be recorded and maintained by an Authorized Officer of the I-Bank, or a designee thereof, in the records of the I-Bank with respect to the Loan for the purpose of funding fifty percent (50%) of the Administrative Fee identified in Exhibit B hereto, with such disbursement (and any subsequent and supplemental disbursements made pursuant to Exhibit B hereto, as Exhibit B may hereafter be amended or supplemented as provided by the provisions hereof) being made by the I-Bank on behalf of the Borrower directly to the NJDEP. The Borrower further acknowledges and agrees that the remaining unpaid balance of the Administrative Fee shall be due and payable on the Maturity Date or as otherwise established by the I-Bank pursuant to the terms of the Anticipated Financing Program.

(c) On the Maturity Date or, with respect to the payment of all or a portion of the Interest, on the applicable Payment Date(s) as and to the extent provided herein, the Borrower shall repay the Loan to the I-Bank in an amount equal to: (i) the Principal; (ii) the Interest then due and owing pursuant to the provisions of this Note; and (iii) any other amounts then due and owing pursuant to the provisions of this Note. The Borrower may prepay the Loan obligations hereunder, in whole or in part, upon receipt of the prior written consent of an Authorized Officer of the I-Bank. Each payment made to the I-Bank shall be applied to the payment of, first, the Interest then due and payable, second, the Principal, third, any late charges, and, finally, any other amount then due and payable pursuant to the provisions of this Note. In the event that the repayment obligation set forth in this Note is received by the I-Bank later than the Maturity Date or the Payment Date,

as the case may be, a late fee shall be payable to the I-Bank in an amount equal to the greater of twelve percent (12%) per annum or the prime rate as published in the Wall Street Journal on the Maturity Date or the Payment Date, as the case may be, plus one half of one percent per annum on such late payment from the Maturity Date or the Payment Date, as the case may be, to the date it is actually paid; provided, however, that any late payment charges incurred hereunder shall not exceed the maximum interest rate permitted by law.

(d) Notwithstanding the provisions of this Note to the contrary with respect to the funding, pursuant to Section 4(a) hereof, of any Loan Disbursement Requisition relating to all or any portion of the Project, the Borrower hereby acknowledges and agrees, as follows: (i) the I-Bank shall not, and shall not be required to, commit funds, pursuant to the Water Bank Construction Financing Program of the I-Bank, to any portion of the Project until such time as the particular portion of the Project in question has been certified for funding by the NJDEP; (ii) no Loan Disbursement Requisition shall be approved by the I-Bank for disbursement pursuant to Section 4(a) hereof unless and until the portion of the Project to which such Loan Disbursement Requisition relates has been certified for funding by the NJDEP; (iii) the I-Bank has no obligation pursuant to this Note to make all or any portion of any Loan Disbursement Requisition disbursement pursuant to the provisions of Section 4(a) hereof if the Borrower lacks the authority to pay interest on this Note in an amount equal to the Interest Rate.

SECTION 5. Unconditional Obligations. The direct, general obligation of the Borrower to make the Loan repayments and all other payments required hereunder and the obligation to perform and observe the other duties, covenants, obligations and agreements on its part contained herein shall be absolute and unconditional, and shall not be abated, rebated, set-off, reduced, abrogated, terminated, waived, diminished, postponed or otherwise modified in any manner whatsoever while any Loan repayments, or any other payments due hereunder, remain unpaid, regardless of any contingency, act of God, event or cause whatsoever, including (without limitation) any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, the taking by eminent domain or destruction of or damage to the Project or Environmental Infrastructure System, commercial frustration of the purpose, any change in the laws of the United States of America or of the State or any political subdivision of either or in the rules or regulations of any governmental authority, any failure of the I-Bank to perform and observe any agreement or any duty, liability or obligation arising out of this Note, or any rights of set-off, recoupment, abatement or counterclaim that the Borrower might have against the I-Bank or any other party; provided, however, that payments hereunder shall not constitute a waiver of any such rights.

SECTION 6. Events of Default. The following events shall constitute an “Event of Default” hereunder: (i) failure by the Borrower to pay, when due, any and all of its Loan repayment obligations hereunder, and any other payment obligations due hereunder; (ii) failure by the Borrower to observe and perform any duty, covenant, obligation or agreement on its part to be observed or performed pursuant to the terms of this Note; (iii) any representation made by the Borrower contained in this Note or in any instrument furnished in compliance with or with reference to this Note is false or misleading in any material respect; and (iv) a petition is filed by or against the Borrower under any federal or state bankruptcy or insolvency law or other similar law in effect on the date of this Note or thereafter enacted, unless in the case of any such petition

filed against the Borrower such petition shall be dismissed within thirty (30) days after such filing and such dismissal shall be final and not subject to appeal, or the Borrower shall become insolvent or bankrupt or shall make an assignment for the benefit of its creditors, or a custodian of the Borrower or any of its property shall be appointed by court order or take possession of the Borrower or its property or assets if such order remains in effect or such possession continues for more than thirty (30) days.

SECTION 7. Remedies upon Event of Default. Whenever an Event of Default shall have occurred and be continuing pursuant to the terms hereof, the Borrower hereby acknowledges and agrees to the rights of the I-Bank to take any action permitted or required at law or in equity to collect the amounts then due and thereafter to become due hereunder or to enforce the observance and performance of any duty, covenant, obligation or agreement of the Borrower hereunder. If an Event of Default shall have occurred, the Borrower hereby acknowledges and agrees that the I-Bank shall have the right to (i) immediately cease disbursements of the proceeds of the Loan, and/or (ii) declare all Loan repayments and all other amounts due hereunder to be due and payable immediately without further notice or demand. The Borrower hereby acknowledges and agrees that no remedy herein is intended to be exclusive, and every remedy shall be cumulative and in addition to every other remedy given under this Note or now or hereafter existing at law or in equity. The Borrower hereby further acknowledges and agrees that no delay or omission by the I-Bank to exercise any remedy or right accruing upon any Event of Default shall impair any such remedy or right or shall be construed to be a waiver thereof, but any such remedy or right may be exercised as often as may be deemed expedient. The Borrower hereby further acknowledges and agrees that, pursuant to the I-Bank's Credit Policy, during such time as an Event of Default has occurred and is continuing hereunder, the Borrower shall be ineligible for additional financial assistance from the I-Bank (including, without limitation, long-term financing through the Anticipated Financing Program), in addition to certain other consequences set forth in the Credit Policy. The Borrower hereby agrees that upon demand it shall pay to the I-Bank the reasonable fees and expenses of attorneys and other reasonable expenses (including, without limitation, the reasonably allocated costs of in-house counsel and legal staff) incurred in the collection of Loan repayments or any sum due hereunder or in the enforcement of the observation or performance of any obligations or agreements of the Borrower upon an Event of Default. Any moneys collected by the I-Bank pursuant to this Section 7 shall be applied first to pay any attorneys' fees or other fees and expenses owed by the Borrower.

SECTION 8. Certain Miscellaneous Provisions. The Borrower hereby acknowledges and agrees as follows: (a) all notices hereunder shall be deemed given when hand delivered or when mailed by registered or certified mail, postage prepaid, to the Borrower at the following address: [Name and Address of Borrower, Attention: Name of Authorized Officer]; and to the I-Bank at the following address: New Jersey Infrastructure Bank, 3131 Princeton Pike, Building 4, Suite 216, Lawrenceville, New Jersey 08648-2201, Attention: Executive Director; (b) this Note shall be binding upon the Borrower and its successors and assigns; (c) in the event any provision of this Note is held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof; (d) the obligations of the Borrower pursuant to the terms of this Note may not be assigned by the Borrower for any reason, unless the I-Bank shall have approved said assignment in writing; (e) this Note may not be amended, supplemented or modified without the prior written consent of the

I-Bank; (f) this Note shall be governed by and construed in accordance with the laws of the State; (g) the Borrower shall, at the request of the I-Bank, execute and deliver such further instruments as may be necessary or desirable for better assuring, conveying, granting, assigning and confirming the rights, security interests and agreements granted or intended to be granted by this Note; (h) whenever the Borrower is required to obtain the determination, approval or consent of the I-Bank pursuant to the terms hereof, such determination, approval or consent may be either granted or withheld by the I-Bank in its sole and absolute discretion; and (i) consistent with the provisions of N.J.S.A. 58:11B-13, neither the directors of the I-Bank nor any officers of the I-Bank taking any action with respect to this Loan shall be liable personally with respect to the Loan or any matters or transactions related thereto.

[The remainder of this page has been left blank intentionally.]

IN WITNESS WHEREOF, the Borrower has caused this Note to be duly executed, sealed and delivered on the date first above written.

[NAME OF BORROWER]

[SEAL]

ATTEST:

By: _____
Mayor

Clerk

By: _____
Chief Financial Officer

