

RESOLUTION NO. 20 - 47

RESOLUTION AUTHORIZING VARIOUS ACTIONS AND FORMS OF DOCUMENTS NECESSARY FOR THE LONG-TERM FINANCING OF I-BANK ENVIRONMENTAL INFRASTRUCTURE PROJECTS

WHEREAS, pursuant to Section 5(i) and Section 6(a) of the New Jersey 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”), the New Jersey Infrastructure Bank, a public body corporate and politic under the laws of the State, created pursuant to the Act (the “I-Bank”), is authorized to issue its bonds (the “I-Bank Bonds”) in any principal amounts (subject to the limitations of Section 6(g) of the Act) as in its judgment shall be necessary to provide funds sufficient for any of its corporate purposes, including, without limitation, the making of loans (each, an “I-Bank 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 “Water Bank Project”); and

WHEREAS, pursuant to Section 5(m) and Section 9(a) of the Act, the I-Bank is authorized to make and contract to make I-Bank Loans to Project Sponsors to finance a portion of the costs of the respective Water Bank Projects thereof, 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 I-Bank shall determine to be consistent with the purposes thereof; and

WHEREAS, the Board of Directors of the I-Bank (the “Board”) currently is scheduled to consider, as part of its agenda at its meeting to be held on or about September 10, 2020, the Water Bank Project applications of certain Project Sponsors for I-Bank Loans from the I-Bank, which I-Bank Loans, if approved, would be made, pursuant to the provisions of the Act, by the I-Bank to such Project Sponsors from the proceeds of I-Bank Bonds, to be issued pursuant to the State Fiscal Year 2021 New Jersey Water Bank Financing Program (Fall Pool) of the I-Bank (the “Program”), which I-Bank Bonds are expected to be issued by the I-Bank, pursuant to the Program, on or about November 10, 2020; and

WHEREAS, notwithstanding the provisions of the preceding clause, the I-Bank currently seeks, and is applying for, funding via a loan (the “WIFIA Loan”) from the United States Environmental Protection Agency (the “USEPA”), through the Water Infrastructure Finance and Innovation Act of 2014 (the “WIFIA”), 33 U.S.C. § 3901 *et seq.*, as an additional source of funding that, if received by the I-Bank, may be used by the I-Bank to supplement and replace the proceeds of I-Bank Bonds as a source of funding for a portion of the I-Bank Loan made pursuant to the Program by the I-Bank to certain or all of the Project Sponsors for their respective Water Bank Project; and

WHEREAS, to the extent that the I-Bank is successful in its application for funding from the USEPA through WIFIA via a WIFIA Loan as described herein, the detailed terms of such WIFIA Loan shall be set forth in a loan agreement by and between the I-Bank and the USEPA (the “WIFIA Loan Agreement”), which WIFIA Loan Agreement, and the provisions thereof, shall be subject to the approval hereafter via official action of the Board prior to implementation thereof; and

WHEREAS, to the extent that the I-Bank is successful in its application for funding from the USEPA through WIFIA via a WIFIA Loan as described herein, the I-Bank may elect, as provided herein, to implement the Program (i) pursuant to an alternative schedule that would provide for I-Bank Bonds to be issued by the I-Bank, pursuant to the Program, on a date later than the estimated date of November 10, 2020 projected above, and (ii) in one or more tranches; and

WHEREAS, each I-Bank Loan made pursuant to the Program by the I-Bank to a Project Sponsor for its Water Bank Project shall be made according to the terms and provisions of a loan agreement, by and between the I-Bank and the respective Project Sponsor (each, an “I-Bank Loan Agreement”); and

WHEREAS, the I-Bank, in consultation with its professional advisors, Bond Counsel and the Office of the State Attorney General, has prepared master forms of the I-Bank Loan Agreement, such forms being attached hereto as Exhibit A and made a part hereof, which master forms are subject to further revisions hereafter to the extent required in order to conform with the terms of the WIFIA Loan and the WIFIA Loan Agreement, to the extent that the WIFIA Loan is received by the I-Bank and proceeds thereof are provided by the I-Bank to a given Project Sponsor that shall be a party to such I-Bank Loan Agreement, which further revisions to such master forms shall comply and conform with the terms of the WIFIA Loan and the WIFIA Loan Agreement, as such terms are hereafter approved by official action of the Board (collectively, the “Subsequently Approved WIFIA Terms”); and

WHEREAS, the I-Bank Loan Agreement contains all of the terms and conditions that are applicable to the receipt by the Project Sponsors of I-Bank Loans from the I-Bank, including, without limitation, specific terms and conditions with which each Project Sponsor must comply prior to receipt of an I-Bank Loan from the I-Bank, but remain subject, as applicable hereafter, to the Subsequently Approved WIFIA Terms, as and to the extent provided herein, and do not contain those terms and conditions that cannot be determined until completion of the sale of the I-Bank Bonds or until further evaluation of information to be received by the I-Bank from the Project Sponsors; and

WHEREAS, pursuant to the terms and provisions of the Program and subject to (i) satisfaction in full of the conditions precedent set forth in the hereinafter defined Escrow Agreement and (ii) the final certification of the respective Water Bank Project pursuant to the regulations and procedures of the New Jersey Department of Environmental Protection (the “NJDEP”), the I-Bank and each Project Sponsor shall deposit into escrow (the “Escrow Closing”) the duly authorized, executed and delivered I-Bank Loan Agreement (subject to completion, following Escrow Closing, to the extent of those terms and conditions that cannot be determined until completion of the sale of the I-Bank Bonds or until further evaluation of information to be received by the I-Bank from the Project Sponsor) and certain other Program-related documents (collectively, the “Escrowed Program Documents”), which Escrowed Program Documents shall be held in escrow by Zions Bancorporation, National Association d/b/a Zions Bank, a national banking association with trust and fiduciary powers in the State, duly appointed by the Board as escrow agent (the “Escrow Agent”), pursuant to the terms and provisions of an escrow agreement (the “Escrow Agreement”) to which the I-Bank, the respective Project Sponsor and the Escrow Agent, *inter alia*, shall be parties, which Escrow Agreement shall establish the terms

and conditions governing the holding in escrow and administering by the Escrow Agent of the Escrowed Program Documents, including, without limitation, the completion of those terms and conditions of the I-Bank Loan Agreement that cannot be determined until completion of the sale of the I-Bank Bonds or until the further evaluation of information to be received by the I-Bank from the Project Sponsor; and

WHEREAS, the I-Bank, in consultation with its professional advisors, Bond Counsel and the Office of the State Attorney General, has prepared master forms of the Escrow Agreement, such forms being attached hereto as Exhibit B and made a part hereof, which master forms hereafter are subject to further revisions to the extent required in order to conform with the Subsequently Approved WIFIA Terms; and

WHEREAS, in furtherance of the intent and goals of the Program, the Board currently is scheduled to consider, as part of its agenda at its meeting to be held on or about September 10, 2020 (subject to deferral to a later date in connection with the Subsequently Approved WIFIA Terms, as provided herein), the adoption of one or more resolutions of the I-Bank, each of which shall authorize the issuance of I-Bank Bonds pursuant to the terms and provisions of an Indenture of Trust, by and between the I-Bank and Zions Bancorporation, National Association d/b/a Zions Bank, a national banking association with trust and fiduciary powers in the State, duly appointed by the Board to act as trustee thereunder (each such resolution and the Indenture of Trust authorized thereby to be referred to collectively herein as the “I-Bank Bond Indenture”), which I-Bank Bond Indenture shall authorize, *inter alia*, (i) the marketing, issuance and sale by the I-Bank of its I-Bank Bonds, (ii) the allocation of the proceeds of the I-Bank Bonds and the proceeds of the WIFIA Loan, as and if applicable, pursuant to the terms hereof to some or all of the Water Bank Projects of the respective Project Sponsors pursuant to the terms of the respective I-Bank Loan Agreement, (iii) the investment of the proceeds of the I-Bank Bonds until expenditure thereof pursuant to the terms of the I-Bank Bond Indenture, and (iv) certain other matters as shall be set forth in the I-Bank Bond Indenture; and

WHEREAS, it is the desire of the Board, in furtherance of the intent and purposes of the Program, that the Chairperson of the I-Bank, the Vice-Chairperson of the I-Bank, the Secretary of the I-Bank, and 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”), each be severally authorized to act on behalf of the I-Bank and implement in furtherance of the Program (i) the completion of an Escrow Closing with respect to the I-Bank Loan to be made by the I-Bank to each qualifying Project Sponsor for its Water Bank Project from the proceeds of the I-Bank Bonds and the proceeds of the WIFIA Loan, as and if applicable, pursuant to the terms hereof, (ii) the conduct, if necessary, of a hearing (the “TEFRA Hearing”) with respect to the I-Bank Bonds pursuant to the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”), (iii) the submission of a written request by the I-Bank (the “Investment Authorization Request”) to the Director of the Division of Investments in the New Jersey Department of the Treasury (the “Director”) for approval of the investment by the I-Bank of proceeds of the I-Bank Bonds pursuant to, among other investment instruments that may be deemed appropriate and advantageous, a repurchase agreement that does not conform with State Investment Council regulations, which approval by the Director is dependent upon a finding thereby that such

investment is consistent with the corporate purposes of the I-Bank and (iv) such other actions in connection with the foregoing or such other actions as shall be necessary in furtherance of the intent and purposes of the Program.

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

Section 1. Authorization of the I-Bank Loan Agreement. In furtherance of the intent and purposes of the Program, the Board hereby approves the execution and delivery at Escrow Closing (but only upon (i) satisfaction in full of the conditions precedent to Escrow Closing set forth in the respective Escrow Agreement and (ii) the final certification of the respective Water Bank Project pursuant to the regulations and procedures of the NJDEP) of an I-Bank Loan Agreement with respect to each I-Bank Loan to be made by the I-Bank to each Project Sponsor, pursuant to the Program, in connection with the respective Water Bank Project thereof, each such I-Bank Loan Agreement to be in substantially the form attached hereto as Exhibit A and made a part hereof, with such revisions and modifications thereto (including, without limitation and to the extent applicable, such revisions and modifications thereto pursuant to the Subsequently Approved WIFIA Terms) as shall be approved by any Authorized Officer, after consultation with counsel to the I-Bank, such approval to be evidenced by the execution thereof by such Authorized Officer; provided, however, that each I-Bank Loan Agreement executed and delivered at Escrow Closing pursuant to the authorization of the Board set forth herein shall be exclusive of the following terms, which terms shall be completed, upon completion of the sale of the I-Bank Bonds and further evaluation of information to be received by the I-Bank from the Project Sponsors, by any Authorized Officer in a manner (i) consistent with the provisions of the I-Bank Bond Indenture and (ii) pursuant to the provisions of the respective Escrow Agreement relating to the completion of such terms: (a) the principal and interest repayment schedules and adjusted principal amount reflecting, as applicable and without limitation, capitalized interest, reserve capacity, administrative fees and issuance expenses, which cannot be finally determined until completion of the sale of the I-Bank Bonds; (b) if applicable pursuant to the then-current Credit Policy of the I-Bank that has been approved by the Board, provisions requiring additional forms of security, such as a deficiency agreement, a letter of credit or a special reserve fund securing the timely repayment of the I-Bank Loan; and (c) provisions relating to the satisfaction of the “funds available” or “cash on hand” requirement pertaining to the funding of unallowable Water Bank Project costs or that portion of allowable Water Bank Project costs not financed with proceeds of the I-Bank Bonds, or the proceeds of the WIFIA Loan, as and if applicable, pursuant to the terms hereof, through the I-Bank Loan Agreement and the corresponding fund loan agreement entered into by and between the NJDEP and the Project Sponsor.

Section 2. Authorization of the Escrow Agreement. In furtherance of the intent and purposes of the Program, the Board hereby approves the execution and delivery at Escrow Closing (but only upon (i) satisfaction in full of the conditions precedent to Escrow Closing set forth in the respective Escrow Agreement and (ii) the final certification of the respective Water Bank Project pursuant to the regulations and procedures of the NJDEP) of an Escrow Agreement with respect to each I-Bank Loan to be made by the I-Bank to each Project Sponsor, pursuant to the Program, in connection with the respective Water Bank Project thereof, each such Escrow Agreement to be in substantially the form attached hereto as Exhibit B and made a part hereof, with such

revisions and modifications thereto (including, without limitation and to the extent applicable, such revisions and modifications thereto pursuant to the Subsequently Approved WIFIA Terms) as shall be approved by any Authorized Officer, after consultation with counsel to the I-Bank, such approval to be evidenced by the execution thereof by such Authorized Officer.

Section 3. Authorization of Escrow Closing. In furtherance of the intent and purposes of the Program, the Board hereby authorizes any Authorized Officer to engage in an Escrow Closing (but only upon (i) satisfaction in full of the conditions precedent to Escrow Closing set forth in the respective Escrow Agreement and (ii) the final certification of the respective Water Bank Project pursuant to the regulations and procedures of the NJDEP), pursuant to the terms and procedures of the Escrow Agreement, with respect to each I-Bank Loan to be made by the I-Bank to each Project Sponsor, pursuant to the Program, in connection with the respective Water Bank Project thereof. The Board hereby authorizes any Authorized Officer, upon consultation with counsel to the I-Bank, (i) to determine the Escrow Closing schedule and (ii) to undertake any other action in furtherance of the Escrow Closing, relating to the I-Bank Loan made by the I-Bank to each Project Sponsor in connection with the respective Water Bank Project thereof, as such Authorized Officer shall determine to be necessary.

Section 4. Authorization of Execution of the I-Bank Loan Agreement, the Escrow Agreement and any other Escrowed Program Documents. In furtherance of the intent and purposes of the Program, the Board hereby authorizes (but only upon (i) satisfaction in full of the conditions precedent to Escrow Closing set forth in the respective Escrow Agreement and (ii) the final certification of the respective Water Bank Project pursuant to the regulations and procedures of the NJDEP) that (i) the I-Bank Loan Agreement, the Escrow Agreement, any other Escrowed Program Documents to which the I-Bank is a party, and any other document required to be executed by the I-Bank in connection with the undertaking and completion of the Escrow Closing, shall be executed in the name of the I-Bank by the manual signature of any Authorized Officer of the I-Bank, and (ii) if required by the terms of such document, its corporate seal shall be impressed, imprinted or otherwise reproduced thereon and attested by the manual signature of the Secretary or Assistant Secretary or other Authorized Officer of the I-Bank.

Section 5. Authorization of Other Action in Furtherance of Escrow Closing. In furtherance of the intent and purposes of the Program, the Board hereby authorizes any Authorized Officer, after consultation with counsel to the I-Bank, to take such other actions and to execute such other documents and instruments as may be necessary or appropriate (and not inconsistent with the terms and provisions of this Resolution, including, without limitation, the terms and provisions of this Resolution relating to the Subsequently Approved WIFIA Terms) to effect the consummation of an Escrow Closing with respect to each I-Bank Loan made by the I-Bank to each Project Sponsor, pursuant to the Program, in connection with the respective Water Bank Project thereof.

Section 6. Authorization of TEFRA Hearing. In furtherance of the intent and purposes of the Program, the Board hereby authorizes any Authorized Officer, after consultation with counsel to the I-Bank, to conduct the TEFRA Hearing with respect to the I-Bank Bonds (as well as publication prior to the TEFRA Hearing of public notice as required by the Code) at such time and in such manner as any Authorized Officer, after consultation with counsel to the I-Bank, shall

determine to be necessary, convenient or desirable in order to satisfy the requirements of the Code.

Section 7. Authorization of Investment Authorization Request. In furtherance of the intent and purposes of the Program, the Board hereby authorizes any Authorized Officer, if determined to be necessary by an Authorized Officer after consultation with counsel to the I-Bank, to submit the Investment Authorization Request to the Director for approval and to undertake any other action necessary in connection with (i) the approval by the Director of the investment by the I-Bank of a portion of the proceeds of the I-Bank Bonds pursuant to, among any other investment instruments that may be deemed appropriate and advantageous by the Authorized Officer, a repurchase agreement that does not conform with State Investment Council regulations and (ii) the finding by the Director that such investment is consistent with the corporate purposes of the I-Bank.

Section 8. Authorization of Action in Furtherance of Program Funding with Proceeds of a WIFIA Loan. To the extent that the I-Bank is successful in its application for funding from the USEPA through WIFIA via a WIFIA Loan as described herein, an Authorized Officer may elect, subject to the Subsequently Approved WIFIA Terms, to implement the Program (i) pursuant to an alternative schedule that would provide for I-Bank Bonds to be issued by the I-Bank, pursuant to the Program, on a date later than the estimated date of November 10, 2020 projected above, and (ii) in one or more tranches.

Section 9. Authorization of Other Action in Furtherance of the Program. The Board hereby authorizes any Authorized Officer, after consultation with counsel to the I-Bank, to take such other actions, to execute such other instruments and to seek such other consents as may be necessary or appropriate (and not inconsistent with the terms and provisions of this Resolution, including, without limitation, the terms and provisions of this Resolution relating to the Subsequently Approved WIFIA Terms) to further the intent and purposes of the Program.

Section 10. 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:	August 13, 2020
Motion Made By:	Mr. Mark Longo
Motion Seconded By:	Ms. Kimberly Holmes
Ayes:	6
Nays:	0
Abstentions:	0

EXHIBIT A

EXHIBIT B