

RESOLUTION NO. 24 - 41

RESOLUTION OF THE NEW JERSEY INFRASTRUCTURE BANK AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDMENT TO LOAN AGREEMENT BY AND BETWEEN THE I-BANK AND THE CITY OF TRENTON

WHEREAS, the New Jersey Infrastructure Bank (the "I-Bank"), a public body corporate and politic with corporate succession, duly created and validly existing pursuant to the New Jersey Environmental Infrastructure Trust Act, constituting Chapter 334 of the Pamphlet Laws of 1985 of the State of New Jersey (the "State"), as amended and supplemented (the "Act"), is authorized, pursuant to Sections 5(m) and 9(a) of the Act, to make and contract to make loans pursuant to loan agreements with local government units and public water utilities (each, a "Local Unit") to finance a portion of the cost of environmental infrastructure system projects that Local Units may lawfully undertake or acquire and for which they are authorized by law to borrow funds; and

WHEREAS, the I-Bank and the City of Trenton, in the County of Mercer, New Jersey (the "City"), a municipal corporation of the State, have entered into a Loan Agreement, dated December 1, 2010 (the "2010 Loan Agreement"), pursuant to the terms of which the I-Bank made a loan to the City (the "Loan") to finance a portion of the costs of the project as defined and described in the 2010 Loan Agreement (the "Original Project"); and

WHEREAS, the City issued its General Improvement Bond, Series 2010 in the principal amount of \$5,465,000 (the "I-Bank Loan Bond") to the I-Bank to evidence and secure the repayment obligations of the City to the I-Bank with respect to the Loan pursuant to the 2010 Loan Agreement, such I-Bank Loan Bond having been issued by the City pursuant to an ordinance as finally adopted by the City on June 17, 2010, as thereafter amended on May 7, 2020 (as amended, the "City Ordinance"); and

WHEREAS, the proceeds of the Loan were loaned by the I-Bank to the City for the purpose of undertaking and completing the Original Project relating to improvements to the Pennington Avenue Reservoir; and

WHEREAS, subsequent to the Loan closing, the City determined that (i) following planning and design efforts with respect to the Original Project, that the installation of a floating cover system on the surface of the Pennington Avenue Reservoir would present material implementation challenges, would not achieve the goals of the Original Project, and had a high lifecycle cost, and (ii) as a result of the facts as set forth in clause (i) hereof, undertook a multi-year effort to explore multiple alternative approaches to the water supply and reservoir needs of the City, in order to successfully identify an alternative to the Original Project; and

WHEREAS, following the City's consideration of alternatives to the Original Project, the City requested that the I-Bank agree to redefine the Original Project being financed with proceeds of the Loan to now include water storage tanks (the "Substitute Project"); and

WHEREAS, in furtherance of its request and in order to implement the redefinition of the Original Project as currently defined in the 2010 Loan Agreement (including as described in Exhibit A-1 to the 2010 Loan Agreement) so as to reflect the Substitute Project, the City (i) has requested that the I-Bank enter into an amendment to the 2010 Loan Agreement, which shall substitute the amended and restated Exhibit A-1, Exhibit B and Exhibit C (attached as Exhibit A) for the original Exhibit A-1, Exhibit B and Exhibit C, and (ii) has informed the I-Bank that such Substitute Project qualifies for financing pursuant to the terms and provisions of the City Ordinance; and

WHEREAS, the I-Bank, following consultation with the New Jersey Department of Environmental Protection, desires to (i) finance, with proceeds of the Loan and pursuant to the 2010 Loan Agreement, the Substitute Project in substitution for the Original Project and (ii) enter into an amendment to the 2010 Loan Agreement, which specifically, shall include the amended and restated Exhibit A-1, Exhibit B and Exhibit C (each as attached to this resolution as Exhibit A).

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the I-Bank (the "Board"), as follows:

Section 1. The Board hereby authorizes and approves the financing, with proceeds of the Loan and pursuant to the 2010 Loan Agreement, of the Substitute Project in substitution for the Original Project as originally defined in the 2010 Loan Agreement (including as described in Exhibit A-1 (paragraph (2)) to the 2010 Loan Agreement).

Section 2. The Board hereby authorizes and approves an amendment to the 2010 Loan Agreement (the “Amendment to Loan Agreement”), for the purpose of the substitution of the Substitute Project for the Original Project. The Amendment to Loan Agreement shall be substantially in the form attached hereto as Exhibit B and made a part hereof, and shall implement the provisions of the preceding sentence via the substitution of the amended and restated Exhibit A-1, Exhibit B and Exhibit C (attached hereto as Exhibit A and made a part hereof).

Section 3. The Chairperson, the Vice Chairperson and the Executive Director of the I-Bank (each, an “Authorized Officer”) are hereby severally authorized and directed to execute the Amendment to the 2010 Loan Agreement, and any certificates, instruments or documents contemplated therein or related thereto. Upon execution of the Amendment to Loan Agreement by the Authorized Officer, the Secretary and the Assistant Secretary of the I-Bank are hereby severally authorized and directed, where required, to affix the corporate seal of the I-Bank and to attest to the signature of such Authorized Officer thereon, and on any certificates, instruments or documents contemplated therein.

Section 4. An Authorized Officer may make such amendments, modifications and revisions to the form of the Amendment to Loan Agreement as submitted to the Board in connection with this meeting and as approved by the Board pursuant to the terms of this Resolution, prior to or simultaneously with the final execution and delivery thereof by such Authorized Officer, as such Authorized Officer may determine, in consultation with the Chairperson of the I-Bank, the Office of the Attorney General of the State and Bond Counsel to the I-Bank, and as are necessary or advisable in order (i) to reflect the actual provisions of this Resolution or (ii) to facilitate the implementation of the intent of the Board in adopting this Resolution; provided, however, no such amendments, modifications or revisions shall be inconsistent with the provisions of (1) the Act, (2) the applicable regulations promulgated pursuant to the Act, (3) the Financial Plan as required by the Act and applicable to the Loan, and (4) this Resolution. If amendments, modifications or revisions, other than those specified herein, are material and are sought to be made by an Authorized Officer to material terms of the Amendment to Loan Agreement, such amendments, modifications or revisions shall be subject to future Board action via the adoption of an approving authorizing resolution by the Board.

Section 5. The Board hereby authorizes any Authorized Officer, after consultation with Bond Counsel to the I-Bank, to take such other actions, to execute such other documents and instruments, and to seek such consents as may be necessary or desirable (and not inconsistent with the terms and provisions of (1) the Act, (2) the applicable regulations promulgated pursuant to the Act, (3) the Financial Plan as required by the Act and applicable to the Loan, and (4) this Resolution) in order to further the intent and purposes of this Resolution.

Section 6. This Resolution shall take effect immediately, subject to the provisions of the Act.

Adopted Date: September 12, 2024

Motion Made By: Mr. James McManus

Motion Seconded By: Mr. Mark Longo

Ayes: 6

Nays: 0

Abstentions: 0

FIRST AMENDMENT TO

LOAN AGREEMENT

BY AND BETWEEN

**NEW JERSEY INFRASTRUCTURE BANK
(f/k/a New Jersey Environmental Infrastructure Trust)**

AND

CITY OF TRENTON

(Project 1111001-009)

DATED: SEPTEMBER __, 2024

This **FIRST AMENDMENT TO LOAN AGREEMENT** (the “First Amendment to Loan Agreement”) is made and entered into on September __, 2010, by and between the **NEW JERSEY INFRASTRUCTURE BANK** (f/k/a the New Jersey Environmental Infrastructure Trust) (the “I-Bank”), a public body corporate and politic with corporate succession, and the **CITY OF TRENTON**, in the County of Mercer, New Jersey (the “Borrower”), a municipal corporation of the State of New Jersey (the “State”), as an amendment and supplement to that certain 2010 Loan Agreement as hereinafter defined (all terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the 2010 Loan Agreement).

WITNESSETH THAT:

WHEREAS, the I-Bank, duly created and validly existing pursuant to the New Jersey Environmental Infrastructure Trust Act, constituting Chapter 334 of the Pamphlet Laws of 1985 of the State, as amended and supplemented (the “Act”), is authorized, pursuant to Sections 5(m) and 9(a) of the Act, to make and contract to make loans pursuant to loan agreements with local government units and public water utilities (each, a “Local Unit”) to finance a portion of the cost of environmental infrastructure system projects that Local Units may lawfully undertake or acquire and for which they are authorized by law to borrow funds; and

WHEREAS, the I-Bank and the Borrower have entered into that certain Loan Agreement, dated as of December 1, 2010 (the “2010 Loan Agreement”), pursuant to the terms of which the I-Bank made a loan to the Borrower (a “Loan”) to finance a portion of the costs of the “Project” (Project 1111001-009) as defined and described in the 2010 Loan Agreement (including as described in Exhibit A-1 (paragraph (2)) of the 2010 Loan Agreement) (the “Original Project”); and

WHEREAS, the Borrower issued its General Improvement Bond, Series 2010 in the principal amount of \$5,465,000 (the “I-Bank Loan Bond”) to the I-Bank, as holder thereof, to evidence and secure the repayment obligations of the Borrower to the I-Bank with respect to the Loan pursuant to the 2010 Loan Agreement, such I-Bank Loan Bond having been issued by the Borrower pursuant to an ordinance as finally adopted by the Borrower on June 17, 2010, as thereafter amended on May 7, 2020 (as amended, the “City Ordinance”); and

WHEREAS, the proceeds of the Loan were loaned by the I-Bank to the Borrower, pursuant to the terms of the 2010 Loan Agreement, for the purpose of undertaking and completing the Original Project, which Original Project relates to improvements to the Pennington Avenue Reservoir; and

WHEREAS, subsequent to the closing with respect to the Loan, the Borrower [(i) encountered material public opposition to the Project as a result of the impact that the installation of a floating cover system on the surface of the Pennington Avenue Reservoir would have upon the attractiveness and utilization of the public park in which such Reservoir is located,] (ii) determined, following planning and design efforts with respect to the Project, that the installation of a floating cover system on the surface of the Pennington Avenue Reservoir would present material implementation challenges, would fail to successfully achieve the fundamental objectives of the Project, and would have a high lifecycle cost, and (iii) as a result of the facts as set forth in clauses (i) and (ii) hereof, undertook a multi-year effort to explore multiple alternative approaches

to the water supply and reservoir needs of the Borrower, in order to successfully identify a viable alternative to the Original Project; and

WHEREAS, following the exercise of efforts by the Borrower as referenced in clause (iii) of the preceding recital, the Borrower requested that the I-Bank agree to the financing, with proceeds of the Loan and pursuant to the 2010 Loan Agreement, of a newly defined project (the “Substitute Project”) in substitution for the Original Project; and

WHEREAS, in furtherance of its request and in order to implement the redefinition of the Original Project so as to reflect the Substitute Project, the Borrower (i) has requested that the I-Bank enter into this First Amendment to Loan Agreement, in accordance with the amendment provisions of the 2010 Loan Agreement, which First Amendment to Loan Agreement, specifically, substitutes the amended and restated Exhibit A-1, Exhibit B and Exhibit C for the original Exhibit A-1, Exhibit B and Exhibit C, each as attached to the 2010 Loan Agreement upon execution and delivery thereof, and (ii) has informed the I-Bank that such Substitute Project qualifies for financing by the Borrower pursuant to the terms and provisions of the City Ordinance; and

WHEREAS, the I-Bank, following consultation with the New Jersey Department of Environmental Protection, adopted on September 14, 2024 its “Resolution of the New Jersey Infrastructure Bank Authorizing the Execution and Delivery of an Amendment to Loan Agreement by and Between the I-Bank and the City of Trenton”, pursuant to the terms of which the I-Bank authorized (i) the financing, with proceeds of the Loan and pursuant to the 2010 Loan Agreement, the Substitute Project in substitution for the Original Project, and (ii) this First Amendment to Loan Agreement, hereby entered into in accordance with the amendment provisions of the 2010 Loan Agreement, which First Amendment to Loan Agreement hereby serves to substitute the amended and restated Exhibit A-1, Exhibit B and Exhibit C for the original Exhibit A-1, Exhibit B and Exhibit C, each as attached to the 2010 Loan Agreement upon execution and delivery thereof.

NOW, THEREFORE, for and in consideration of the award of the Loan by the I-Bank, the Borrower and the I-Bank agree to amend the 2010 Loan Agreement, as follows:

Section 1. Substitution of Exhibits A-1, B and C.

- (a) Exhibit A-1 to the 2010 Loan Agreement is hereby deleted and replaced in its entirety with the substitute form of Exhibit A-1 attached to this First Amendment to Loan Agreement.
- (b) Exhibit B to the 2010 Loan Agreement is hereby deleted and replaced in its entirety with the substitute form of Exhibit B attached to this First Amendment to Loan Agreement.
- (c) Exhibit C to the 2010 Loan Agreement is hereby deleted and replaced in its entirety with the substitute form of Exhibit C attached to this First Amendment to Loan Agreement.

Section 2. Representations. The Borrower hereby represents, as follows:

- (a) Subsequent to the closing with respect to the Loan:
- i. [The Borrower encountered material public opposition to the Original Project as a result of the impact that the installation of a floating cover system on the surface of the Pennington Avenue Reservoir would have upon the attractiveness and utilization of the public park in which such Reservoir is located;]
 - ii. The Borrower determined, following planning and design efforts with respect to the Original Project, that the installation of a floating cover system on the surface of the Pennington Avenue Reservoir would present material implementation challenges, including the following:
 1. The expense of the floating cover system design increased substantially since the Borrower's consulting engineer had completed its study in 2008;
 2. It was determined that the floating cover system would have a lifespan of 15 years as opposed to the 25 year lifespan that had been identified originally by the Borrower, thereby resulting in the fact that the floating cover system would need to be replaced multiple times during the course of a 50-year timeframe;
 3. For these reasons, the floating cover system was determined to have a higher lifecycle cost when compared to other alternative designs;
 - iii. As a result of the facts as set forth in clauses (i) and (ii) hereof, the Borrower undertook a multi-year effort to explore multiple alternative approaches to the water supply and reservoir needs of the Borrower, in order to successfully identify a viable alternative to the Original Project, with the Substitute Project presenting the following advantages as compared to the Original Project:
 1. The decentralized storage tank network will provide a high degree of risk mitigation from serious consequences that may result from operational failures or adversarial actions (e.g., sabotage, terrorist attacks, etc.);
 2. The decentralized storage tank network will increase storage in the high-pressure zone, which will provide more consistent pressures system-wide and afford the Borrower increased response time to address operational issues that may occur at its Central Pumping Station;
 3. The decentralized storage tank network will eliminate the need for, and associated expense of, added maintenance that would be required by the floating cover system;

4. The decentralized storage tank network will eliminate the Pennington Avenue Reservoir as part of the water supply network of the Borrower, thereby enabling the removal of the high hazard dam from service and eliminating the associated implications that may result from dam failure;
 5. The Pennington Avenue Reservoir site will provide real estate for the Borrower that can be repurposed to meet future needs of the Borrower's water utility.
- (b) The Substitute Project, as described in substitute Exhibit A-1 (paragraph (2) to this First Amendment to Loan Agreement, qualifies for financing by the Borrower pursuant to the terms and provisions of the City Ordinance and the I-Bank Loan Bond issued pursuant to the City Ordinance.
 - (c) Each of representations of the Borrower contained in the 2010 Loan Agreement are true and correct at the time of the execution of this First Amendment to Loan Agreement and after giving effect to the terms and provisions of this First Amendment to Loan Agreement.
 - (d) The Borrower is not in default with respect to any of the terms or provisions of the 2010 Loan Agreement, as amended by this First Amendment to Loan Agreement, as of the date of the execution of this First Amendment to Loan Agreement and after giving effect to the terms and provisions of this First Amendment to Loan Agreement.
 - (e) The Borrower acknowledges that the I-Bank, in entering into this First Amendment to Loan Agreement, is relying upon the accuracy of the representations of the Borrower as set forth in this Section 2.

Section 3. Other Terms and Provisions. All other terms and provisions of the 2010 Loan Agreement, that are not amended or supplemented by this First Amendment to Loan Agreement, shall remain in full force and effect. For all purposes of the 2010 Loan Agreement, the 2010 Loan Agreement, as amended by this First Amendment to Loan Agreement, shall be the "Loan Agreement" as defined in and pursuant thereto.

Section 4. Execution in Counterparts. This First Amendment to Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

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IN WITNESS WHEREOF, the I-Bank and the Borrower have caused this First Amendment to Loan Agreement to be executed, sealed and delivered as of the date first above written.

**NEW JERSEY INFRASTRUCTURE
BANK**

[SEAL]

ATTEST:

By: _____
Robert A. Briant, Jr.
Chairman

David E. Zimmer
Assistant Secretary

CITY OF TRENTON

[SEAL]

ATTEST:

By: _____
Authorized Officer

Authorized Officer