



New Jersey Infrastructure Bank
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**NEW JERSEY
DEPARTMENT OF
ENVIRONMENTAL
PROTECTION**

VIA E-mail

October 12, 2022

Hon. W. Reed Gusciora, Esq., Mayor, City of Trenton
Hon. Kathy McBride, Council President, City of Trenton
Hon. Joseph Harrison, Council Member, City of Trenton
Hon. George Muschal, Council Member, City of Trenton
Hon. Robin Vaughn, Council Member, City of Trenton
Hon. Marge Caldwell-Wilson, Council Member, City of Trenton
Hon. Sonya Wilkins, Council Member, City of Trenton

Trenton City Hall
319 East State Street
Trenton, New Jersey 08608

Re: New Jersey Water Bank Program
City of Trenton

Dear Mayor Gusciora, Council President McBride, and City Council Members:

As you know, the New Jersey Infrastructure Bank (“I-Bank”) and the Department of Environmental Protection (“Department”) administer the Water Bank Program (“Water Bank” or “Program”), which has provided significant funding to the City of Trenton (the “City”) to finance necessary improvements to the Trenton Water Works (“TWW”) system. Reference is hereby made to our prior correspondence to you (collectively, the “Prior Correspondence”), dated July 28, 2022 (the “July 28 Correspondence”) and August 16, 2022, on behalf of the I-Bank and the Department in connection with financial assistance previously provided by the Water Bank to the City.

The July 28 Correspondence provided written notice to the City of its covenant default pursuant to Section 2.02(b) of each Loan Agreement¹ because of the City’s failure to timely enact its budget as required by N.J.S.A. 40A:4-10. The I-Bank and the Department also requested that the City cure such default, pursuant to the terms and provisions of Section 5.01(b) of each Loan Agreement (relating to Events of Default), by adopting a budget, in accordance with N.J.S.A. 40A:4-10, and submitting such budget to the Director of the Division of Local Government Services by or before August 27, 2022.

Further, the July 28 Correspondence identified various Material Events pursuant to the Program’s Credit Policy. The occurrence of a Material Event results in a “Finding of Unacceptable Credit Risk.” Material Events include, without limitation, (i) failure of the Applicant to satisfactorily complete all filings with the Local Finance Board or any overseeing State agency (i.e., the City’s annual budget filing); and (ii) the occurrence of an Event of Default under an existing short-term loan from the I-Bank, an I-Bank Loan Agreement and/or a Fund Loan Agreement to which the Applicant is a party.

The July 28 Correspondence elaborates upon the implications of a Finding of Unacceptable Credit Risk.

¹ The “Loan Agreements” are the loan agreements by and between the I-Bank and the City, and the loan agreements by and between the Department and the City, relating to the Environmental Infrastructure Trust Environmental Infrastructure Bonds, Series 2004A, 2006, 2007, 2010A, 2010B, 2010B(CW), 2015 and 2017A-2.

Specifically: (i) an Applicant is ineligible to receive a Program loan, including ineligibility to receive Program loans for the purpose of converting the City's outstanding short-term Construction Loans to long-term loans; and (ii) a covenant default exists pursuant to the City's outstanding short-term Construction Loans (resulting in a Technical Event of Default thereunder). Resulting Program remedies consist of: (i) ineligibility by the City for further short-term Construction Loan disbursements for construction costs through the requisition process; and (ii) acceleration of the repayment of the principal of and interest on the City's short-term Construction Loans.

The I-Bank and the Department are aware of the introduction of a budget for consideration by the City Council. We are pleased at this initial step towards compliance with the covenant obligations in the City's Loan Agreements with the Water Bank. Additionally, we are aware of on-going, constructive conversations between the Executive Branch of the Trenton Municipal Government and the Department.

In response to the initial efforts by the City to comply with its covenant obligations, Section 5.01(b) of the Loan Agreements permits an extension of the thirty-day corrective action period prior to a finding of an Event of Default if the corrective action requires additional time. The I-Bank and the Department have consented to an extension of the corrective action period effective August 27, 2022. This means that the thirty-day corrective action period within which the City must remedy its budget covenant default has been extended to 120 days. Please note that this corrective action period is calculated from the delivery of our written notice on July 28, 2022. Accordingly, the City must remedy its budget covenant default by or before Friday, November 25, 2022.

Consent to this extension is subject to (i) our determination pursuant to our discretion, as established in this letter, that the City's initial efforts to comply with its covenant obligations, including introductory procedural steps with respect to the budget introduction combined with constructive conversations between the Executive Branch of the Trenton Municipal Government and the Department represent the institution of corrective action by the City on the covenant default for failure to timely enact a budget, and (ii) our future and ongoing determination, pursuant to our sole discretion, that City's future actions constitute the diligent pursuit of a complete remedy of the City's budget covenant default on or before November 25, 2022.

Further, this letter constitutes an agreement by the I-Bank and the Department as to forbearance during the above-referenced extension period with respect to (i) any Finding of Unacceptable Credit Risk pursuant to the Program's Credit Policy and (ii) any default or Event of Default pursuant to the short-term Construction Loans resulting from such a Finding of Unacceptable Credit Risk. The continuation of this agreement as to forbearance is subject to the sole and absolute discretion of the I-Bank and the Department.

The I-Bank and the Department reserve all rights and remedies, as well as the bond trustees', pursuant to the terms and provisions of (i) the Loan Agreements, (ii) the short-term Construction Loans and (iii) the Program's Credit Policy. In addition, the I-Bank and the Department reserve the right to take, or to direct the bond trustees to take, any action permitted or required pursuant to the I-Bank's bond resolutions and to take whatever other action at law or in equity may appear necessary or desirable to collect the amounts due under the Loan Agreements and/or the short-term Construction Loans or to enforce the observance and performance of any duty, covenant, obligation or agreement of the City thereunder.

For purposes of evaluating, pursuant to our sole and absolute discretion, the City's future action and the extent to which they constitute the diligent pursuit of a complete remedy of the City's budget covenant default prior to November 25, 2022, the I-Bank and the Department hereby invoke the covenant obligations of the City pursuant to Section 2.02(h) of each Loan Agreement to provide additional information to the I-Bank and the Department relating to its financial standing, including, without limitation, the status of its budget process and compliance thereof with N.J.S.A. 40A:4-10. We require updates from the City (via either written correspondence or via electronic mail) on a regular, biweekly schedule. Such communications shall be submitted to: compliance@njib.gov.

Finally, the I-Bank and the Department will confer and monitor compliance by the City with the Loan Agreements. Please be advised that Section 2.02(f) of each Loan Agreement includes covenant obligations on the part of the City with respect to prudent environmental infrastructure utility practices. The I-Bank and the

Department reserve all rights and remedies available to each in the event that the City fails to comply with its covenant obligations pursuant to Section 2.02(f) of each Loan Agreement.

It is the desire and expectation of the I-Bank and the Department that this forbearance agreement will provide the City ample time to achieve compliance with its Water Bank covenant obligations by enacting a budget on or before November 25, 2022. The City's enactment of a budget by November 25, 2022 is critical if the City is to remain in good standing with the Water Bank and maintain the City's ability to realize the financial and infrastructure opportunities offered by the Program, and which will allow the City to effectively operate and maintain the TWW in a manner that is fully and timely compliant with the applicable covenant obligations in the Loan Agreements.

Please do not hesitate to contact us as the City works to successfully address these issues.

Sincerely,



David E. Zimmer
Executive Director
New Jersey Infrastructure Bank



Patricia Gardner
Assistant Commissioner, Water Resources Management
New Jersey Department of Environmental Protection

cc: **Shawn M. LaTourette**, Commissioner, New Jersey Department of Environmental Protection
Kimberly Cahall, Chief Enforcement Officer, New Jersey Department of Environmental Protection
Jacquelyn Suarez, Director, Division of Local Government Services, New Jersey Department of Community Affairs
Noreen Giblin, Deputy Chief Counsel, Director of Authorities Unit, Office of the Governor
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Victoria Nilsson, Deputy Attorney General, New Jersey Office of the Attorney General