



MEMORANDUM

TO: Members of the Authority

FROM: Melissa Orsen
Chief Executive Officer

DATE: June 9, 2015

SUBJECT: Agenda for Board Meeting of the Authority June 9, 2015

Notice of Public Meeting

Roll Call

Approval of Previous Month's Minutes

Chief Executive Officer's Monthly Report to the Board

Incentive Programs

Bond Projects

Loans/Grants/Guarantees

Office of Recovery

Board Memorandums

Executive Session

Public Comment

Adjournment

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

May 15, 2015

MINUTES OF THE MEETING

Members of the Authority present: Al Koepp, Chairman; Commissioner Kenneth Kobylowski of the Department of Banking and Insurance; Colleen Kokas representing the Commissioner of the Department of Environmental Protection; Jeffrey Stoller representing the Commissioner of the Department of Labor and Workforce Development; Public Members: Joseph McNamara, Vice Chairman; Charles Sarlo, Laurence Downes, Fred B. Dumont, Massiel Medina Ferrara, David R. Huber, William J. Albanese, Sr., and Patrick Delle Cava, First Alternate Public Member.

Present via conference call: Public Members Harold Imperatore, Third Alternate Public Member; and Rodney Sadler, Non-Voting Member.

Absent: Tom Neff representing the State Treasurer, and Public Member Philip B. Alagia.

Also present: Melissa Orsen, Chief Executive Officer of the Authority; Timothy Lizura, President and Chief Operating Officer; Deputy Attorney General Bette Renaud; Christopher Howard, Governor's Authorities' Unit; and staff.

Pursuant to the Internal Revenue Code of 1986, Ms. Orsen announced that this was a public hearing and comments are invited on any Private Activity bond projects presented today.

In accordance with the Open Public Meetings Act, Ms. Orsen announced that notice of this meeting has been sent to the *Star Ledger* and the *Trenton Times* at least 48 hours prior to the meeting, and that a meeting notice has been duly posted on the Secretary of State's bulletin board at the State House.

MINUTES OF AUTHORITY MEETING

The next item of business was the approval of the April 14, 2015 regular and executive session meeting minutes. A motion was made to approve the minutes by Mr. Stoller, seconded by Mr. Dumont, and was approved by the 12 voting members present.

Chairman Koepp welcomed new member David R. Huber to the Board.

Mr. Imperatore joined the meeting via conference call at this time.

President and COO Timothy Lizura provided an overview of the EDA's new website.

FOR INFORMATION ONLY: The next item was the presentation of the Chief Executive Officer's Monthly Report to the Board.

INCENTIVE PROGRAMS

Economic Redevelopment and Growth Grant Program

ITEM: 7 Long Street Doddtown LLC

APPL.#39492

REQUEST: To approve the application of 7 Long Street Doddtown, LLC for a project located in East Orange, Essex County for the issuance of tax credits. The recommendation is to give up 30% of the eligible costs, not to exceed \$3,354,849, in tax credits based on the budget submitted.

MOTION TO APPROVE: Mr. Albanese **SECOND:** Mr. Stoller **AYES:** 13

RESOLUTION ATTACHED AND MARKED EXHIBIT: 1

ITEM: Chambers Crescent, LLC

APPL.#39516

REQUEST: To approve the addition of The Lakewood Housing Authority as the co-applicant to Chambers Crescent, LLC. On November 10, 2014, the application of Chambers Crescent, LLC was approved for a project located in Lakewood, Ocean County for the issuance of tax credits. The recommendation was to give up 30% of the eligible costs, not to exceed \$4,037,434, in tax credits based on the budget submitted.

MOTION TO APPROVE: Mr. Downes **SECOND:** Mr. McNamara **AYES:** 13

RESOLUTION ATTACHED AND MARKED EXHIBIT: 2

Grow New Jersey Assistance Program

ITEM: Audible, Inc.

APPL.#40678

REQUEST: To approve the finding of jobs at risk.

MOTION TO APPROVE: Mr. Dumont **SECOND:** Ms. Kokas **AYES:** 13

RESOLUTION ATTACHED AND MARKED EXHIBIT: 3

ITEM: Audible, Inc.

APPL.#40678

REQUEST: To approve the application of Audible, Inc. for tax credits under the Grow New Jersey Assistance Program to encourage the applicant to make a capital investment and locate in Newark, NJ. Project location of Newark in Essex County qualifies as a Mega Project under N.J.S.A. 34:1B-242 et seq and the program's rules, N.J.A.C. 19:31-18. The project is eligible, pursuant to the statute, for bonus increases to the tax credit award for Deep Poverty Pocket, Transit Oriented Development, Jobs with Salary in Excess of County Average, Large Number of New/Retained Full-Time Jobs, and Targeted Industry (Technology). The estimated annual award is \$3,937,500 for a 10-year term.

MOTION TO APPROVE: Mr. Downes **SECOND:** Ms. Ferrara **AYES:** 13

RESOLUTION ATTACHED AND MARKED EXHIBIT: 4

ITEM: CareKinesis, Inc.

APPL.#40709

REQUEST: To approve the finding of jobs at risk.

MOTION TO APPROVE: Mr. Stoller **SECOND:** Mr. Albanese **AYES:** 13

RESOLUTION ATTACHED AND MARKED EXHIBIT: 5

ITEM: CareKinesis, Inc.

APPL.#40709

REQUEST: To approve the application of CareKinesis, Inc. for tax credits under the Grow New Jersey Assistance Program to encourage the applicant to make a capital investment and locate in Moorestown Township, NJ. Project location of Moorestown Township, Burlington County qualifies as a Priority Area under N.J.S.A. 34:1B-242 et seq and the program's rules, N.J.A.C. 19:31-18. The project is eligible, pursuant to the statute, for bonus increases to the tax credit award for Jobs with Salary in Excess of County Average, Large Number of New/Retained Full-Time Jobs, and Targeted Industry (Health). The estimated annual award is \$969,000 for a 10-year term.

MOTION TO APPROVE: Mr. Kokas **SECOND:** Comm. Kobylowski **AYES:** 13

RESOLUTION ATTACHED AND MARKED EXHIBIT: 6

ITEM: Contemporary Graphics and Bindery, Inc. and Affiliates

APPL.#40774

REQUEST: To approve the application of Contemporary Graphics and Bindery, Inc. and Affiliates for a Grow New Jersey Assistance Program Grant to encourage the applicant to make a capital investment and locate in Camden, NJ.

MOTION TO APPROVE: Mr. McNamara **SECOND: Mr. Downes** **AYES:** 13

RESOLUTION ATTACHED AND MARKED EXHIBIT: 7

ITEM: Contemporary Graphics and Bindery, Inc. and Affiliates

APPL.#40774

REQUEST: To approve the application of Contemporary Graphics and Bindery, Inc. and Affiliates for tax credits under the Grow New Jersey Assistance Program to encourage the applicant to make a capital investment and locate in Camden, NJ. Project location of Camden, Camden County qualifies as a Garden State Growth Zone under N.J.S.A. 34:1B-242 et seq and the program's rules, N.J.A.C. 19:31-18. The project is eligible, pursuant to the statute, for bonus increases to the tax credit award for Targeted Industry (Manufacturing), Deep Poverty Pocket, Transit Oriented Development, Mega/GSGZ Ind. Project with Capital Investment in Excess of Minimum and location in a municipality in Camden County with 2007 Revitalization Index greater than 465. The estimated annual award is \$3,390,000 for a 10-year term.

MOTION TO APPROVE: Mr. Albanese **SECOND:** Comm. Kobylowski **AYES:** 13

RESOLUTION ATTACHED AND MARKED EXHIBIT: 8

ITEM: Fidelity Global Brokerage Group, Inc. and subsidiaries

APPL.#40516

REQUEST: To approve the application of Fidelity Global Brokerage Group, Inc. and subsidiaries for tax credits under the Grow New Jersey Assistance Program to encourage the applicant to make a capital investment and locate in Jersey City, NJ. Project location of Jersey City, Hudson County qualifies as an Urban Transit HUB Municipality under N.J.S.A. 34:1B-242 et seq and the program's rules, N.J.A.C. 19:31-18. The project is eligible, pursuant to the statute, for bonus increases to the tax credit award for Transit Oriented Development, Jobs with Salary in Excess of County Average, and Targeted Industry (Finance). The estimated annual award is \$1,650,000 for a 10-year term.

MOTION TO APPROVE: Mr. Stoller **SECOND:** Mr. Downes **AYES:** 13

RESOLUTION ATTACHED AND MARKED EXHIBIT: 9

ITEM: Groupe SEB USA

APPL.#40894

REQUEST: To approve the finding of jobs at risk.

MOTION TO APPROVE: Ms. Kokas **SECOND:** Comm. Kobylowski **AYES:** 13

RESOLUTION ATTACHED AND MARKED EXHIBIT: 10

ITEM: Groupe SEB USA

APPL.#40894

REQUEST: To approve the application of Groupe SEB USA for tax credits under the Grow New Jersey Assistance Program to encourage the applicant to make a capital investment and locate in Parsippany-Troy Hills Township, NJ. Project location of Parsippany-Troy Hills Township, Morris County qualifies as a Priority Area under N.J.S.A. 34:1B-242 et seq and the program's rules, N.J.A.C. 19:31-18. The project is eligible, pursuant to the statute, for bonus increases to the tax credit award for Targeted Industry (Manufacturing) and Exceeds LEEDs Silver. The estimated annual award is \$193,125 for a 10-year term.

MOTION TO APPROVE: Comm. Kobyłowski **SECOND:** Ms. Ferrara **AYES:** 13

RESOLUTION ATTACHED AND MARKED EXHIBIT: 11

ITEM: Impax Laboratories, Inc. and subsidiaries

APPL.#40795

REQUEST: To approve the finding of jobs at risk.

MOTION TO APPROVE: Ms. Kokas **SECOND:** Mr. Downes **AYES:** 13

RESOLUTION ATTACHED AND MARKED EXHIBIT: 12

ITEM: Impax Laboratories, Inc. and subsidiaries

APPL.#40795

REQUEST: To approve the application of Impax Laboratories, Inc. and subsidiaries for tax credits under the Grow New Jersey Assistance Program to encourage the applicant to make a capital investment and locate in Middlesex Borough and Bridgewater Township, NJ. The project location of Middlesex Borough, Middlesex County qualifies as a Priority Area under N.J.S.A. 34:1B-242 et seq and the program's rules, N.J.A.C. 19:31-18. The project is eligible, pursuant to the statute, for bonus increases to the tax credit award for Capital Investment in Excess of Minimum (non-Mega), Jobs with Salary in Excess of County Average, Large Number of Retained Full-Time Jobs, and Targeted Industry (Life Sciences). The estimated annual award is \$873,625 for a 10-year term. In addition, the project location of Bridgewater Township, Somerset County qualifies as a Priority Area under N.J.S.A. 34:1B-242 et seq and the program's rules, N.J.A.C. 19:31-18. The project is eligible, pursuant to the statute, for bonus increases to the tax credit award for Jobs with Salary in Excess of County Average, Large Number of New Full-Time Jobs, and Targeted Industry (Life Sciences). The estimated annual award is \$275,000 for a 10-year term.

MOTION TO APPROVE: Ms. Kokas **SECOND:** Mr. Huber **AYES:** 13

RESOLUTION ATTACHED AND MARKED EXHIBIT: 13

ITEM: Jackson Hewitt Inc. and Subsidiaries

APPL.#40714

REQUEST: To approve the finding of jobs at risk.

MOTION TO APPROVE: Ms. Kokas **SECOND:** Mr. Downes **AYES:** 13

RESOLUTION ATTACHED AND MARKED EXHIBIT: 14

ITEM: Jackson Hewitt Inc. and Subsidiaries

APPL.#40714

REQUEST: To approve the application of Jackson Hewitt Inc. and Subsidiaries for tax credits under the Grow New Jersey Assistance Program to encourage the applicant to make a capital investment and locate in Jersey City, NJ. Project location of Jersey City, Hudson County qualifies as an Urban Transit HUB Municipality under N.J.S.A. 34:1B-242 et seq and the program's rules, N.J.A.C. 19:31-18. The project is eligible, pursuant to the statute, for bonus increases to the tax credit award for Transit Oriented Development and Jobs with Salary in Excess of County Average. The estimated annual award is \$267,375 for a 10-year term.

MOTION TO APPROVE: Comm. Kobylovski **SECOND:** Mr. Downes **AYES:** 13

RESOLUTION ATTACHED AND MARKED EXHIBIT: 15

ITEM: Medidata Solutions, Inc.

APPL.#40799

REQUEST: To approve the application of Medidata Solutions, Inc. for tax credits under the Grow New Jersey Assistance Program to encourage the applicant to make a capital investment and locate in Woodbridge Township, NJ. Project location of Woodbridge Township, Middlesex County qualifies as a Distressed Municipality under N.J.S.A. 34:1B-242 et seq and the program's rules, N.J.A.C. 19:31-18. The project is eligible, pursuant to the statute, for bonus increases to the tax credit award for Jobs with Salary in Excess of County/GSGZ Average, and Targeted Industry (Technology). The estimated annual award is \$750,000 for a 10-year term.

MOTION TO APPROVE: Mr. Albanese **SECOND:** Mr. McNamara **AYES:** 13

RESOLUTION ATTACHED AND MARKED EXHIBIT: 16

ITEM: Northeast Precast LLC

APPL.#40737

REQUEST: To approve the finding of jobs at risk.

MOTION TO APPROVE: Mr. Downes **SECOND:** Ms. Kokas **AYES:** 13

RESOLUTION ATTACHED AND MARKED EXHIBIT: 17

ITEM: Northeast Precast LLC

APPL.#40737

REQUEST: To approve the application of Northeast Precast LLC for tax credits under the Grow New Jersey Assistance Program to encourage the applicant to make a capital investment and locate in Millville City, NJ. Project location of Millville City, Cumberland County qualifies as a Distressed Municipality under N.J.S.A. 34:1B-242 et seq and the program's rules, N.J.A.C. 19:31-18. The project is eligible, pursuant to the statute, for bonus increases to the tax credit award for Deep Poverty Pocket, Capital Investment in Excess of Minimum (non-Mega), Targeted Industry (Manufacturing) and location in a municipality in Cumberland County with 2007 Revitalization Index greater than 465. The estimated annual award is \$812,663 for a 10-year term.

MOTION TO APPROVE: Mr. Dumont **SECOND:** Mr. Huber **AYES:** 13

RESOLUTION ATTACHED AND MARKED EXHIBIT: 18

ITEM: Rubbercycle, LLC

APPL.#40683

REQUEST: To approve the finding of jobs at risk.

MOTION TO APPROVE: Ms. Kokas **SECOND:** Comm. Kobylovski **AYES:** 13

RESOLUTION ATTACHED AND MARKED EXHIBIT: 19

ITEM: Rubbercycle, LLC

APPL.#40683

REQUEST: To approve the application of Rubbercycle, LLC for tax credits under the Grow New Jersey Assistance Program to encourage the applicant to make a capital investment and locate in Lakewood Township, NJ. Project location of Lakewood Township, Ocean County qualifies as a Distressed Municipality under N.J.S.A. 34:1B-242 et seq and the program's rules, N.J.A.C. 19:31-18. The project is eligible, pursuant to the statute, for bonus increases to the tax credit award for Deep Poverty Pocket, Capital Investment in Excess of Minimum (non-Mega), and Targeted Industry (Manufacturing). The estimated annual award is \$247,500 for a 10-year term.

MOTION TO APPROVE: Mr. Stoller **SECOND:** Comm. Kobylowski **AYES:** 13

RESOLUTION ATTACHED AND MARKED EXHIBIT: 20

UEZ/Salem Sales Tax Exemption

ITEM: The Chemours Company F.F., LLC

\$1,162,808 Salem County Energy Sales Tax Exemption ("S-STX")

REQUEST: To approve Chemours' application to participate in the S-STX program

MOTION TO APPROVE: Comm. Kobylowski **SECOND:** Mr. Downes **AYES:** 13

RESOLUTION ATTACHED AND MARKED EXHIBIT: 21

Film Tax Credit Transfer Program

PROJECT: Cover 3 Productions, LLC (Abandoned in the Dark)

MAX AMOUNT OF TAX CREDITS: \$4,696

MOTION TO APPROVE: Ms. Kokas **SECOND:** Mr. McNamara **AYES:** 13

RESOLUTION ATTACHED AND MARKED EXHIBIT: 22

At this time Ms. Orsen announced that, pursuant to the Internal Revenue Code of 1986, this was a public hearing and comments are invited on any Private Activity bond projects presented today.

BOND PROJECTS

*Public hearings are being conducted for these projects.

Amended Bond Resolutions

ITEM: Princeton Charter School*

APPL.#40934

LOCATION: Princeton Borough/Mercer

PROCEEDS FOR: Refinancing

FINANCING: \$7,415,000 Tax-exempt Bond

MOTION TO APPROVE: Mr. Downes **SECOND:** Mr. McNamara **AYES:** 13

RESOLUTION ATTACHED AND MARKED EXHIBIT: 23

PUBLIC HEARING: Yes

PUBLIC COMMENT: None

ITEM: Ranney School* APPL.#40982
LOCATION: Tinton Falls Borough/Monmouth
PROCEEDS FOR: Refinancing
FINANCING: \$21,210,000 Tax-exempt Bond
MOTION TO APPROVE: Mr. Downes **SECOND:** Mr. McNamara **AYES:** 13
RESOLUTION ATTACHED AND MARKED EXHIBIT: 24
PUBLIC HEARING: Yes
PUBLIC COMMENT: None

ITEM: Springpoint at the Atrium, Inc.* APPL.#40994
LOCATION: Red Bank Borough/Monmouth
PROCEEDS FOR: Refinancing
FINANCING: \$21,473,000 (est.) Tax-exempt Bond (Part of a \$26,000,000 total tax –exempt bond financing with Appl. P41001)
MOTION TO APPROVE: Mr. Downes **SECOND:** Ms. Kokas **AYES:** 13
RESOLUTION ATTACHED AND MARKED EXHIBIT: 25
PUBLIC HEARING: Yes
PUBLIC COMMENT: None

ITEM: Springpoint at the Atrium, Inc.* APPL.#41001
LOCATION: Red Bank Borough/Monmouth
PROCEEDS FOR: Refinancing
FINANCING: \$4,563,000 (est.) Tax-exempt Bond (Part of a \$26,000,000 tax-exempt bond financing with P40994)
MOTION TO APPROVE: Mr. Downes **SECOND:** Ms. Kokas **AYES:** 13
RESOLUTION ATTACHED AND MARKED EXHIBIT: 25
PUBLIC HEARING: Yes
PUBLIC COMMENT: None

Mr. Albanese left the meeting at this time.

Combination Preliminary and Bond Resolutions

ITEM: 24 Park Way, LLC* APPL.#40824
LOCATION: Upper Saddle River Borough/Bergen
PROCEEDS FOR: Acquisition/Renovation of existing building
FINANCING: \$4,275,000 Tax-exempt Bond
MOTION TO APPROVE: Ms. Kokas **SECOND:** Mr. Stoller **AYES:** 12
RESOLUTION ATTACHED AND MARKED EXHIBIT: 26
PUBLIC HEARING: Yes
PUBLIC COMMENT: None

ITEM: Congregation Birchas Chaim* APPL.#40987
LOCATION: Lakewood Township/Ocean
PROCEEDS FOR: Refinancing
FINANCING: \$2,237,946 Tax-exempt Bond
MOTION TO APPROVE: Ms. Kokas **SECOND:** Comm. Kobylowski **AYES:** 12

RESOLUTION ATTACHED AND MARKED EXHIBIT: 27

PUBLIC HEARING: Yes

PUBLIC COMMENT: None

Mr. Albanese re-entered the meeting at this time.

ITEM: Flamingo Properties LLC*

APPL.#40979

LOCATION: Hillside Township, Union

PROCEEDS FOR: Acquisition/Renovation of existing building/Purchase of equipment & machinery

FINANCING: \$2,800,000 Tax-exempt Bond

MOTION TO APPROVE: Comm. Kobylowski **SECOND:** Mr. Stoller **AYES:** 13

RESOLUTION ATTACHED AND MARKED EXHIBIT: 28

PUBLIC HEARING: Yes

PUBLIC COMMENT: None

ITEM: Hudson Community Enterprises*

APPL.#40743

LOCATION: Jersey City, Hudson

PROCEEDS FOR: Refinancing/Purchase of equipment & machinery

FINANCING: \$1,500,000 Tax-exempt Bond

MOTION TO APPROVE: Mr. McNamara **SECOND:** Mr. Downes **AYES:** 13

RESOLUTION ATTACHED AND MARKED EXHIBIT: 29

PUBLIC HEARING: Yes

PUBLIC COMMENT: None

Preliminary Resolutions

ITEM: MSC State & River LLC

APPL.#40717

LOCATION: Camden City/Camden

PROCEEDS FOR: Construction of new building or addition

FINANCING: \$24,248,000

MOTION TO APPROVE: Ms. Kokas **SECOND:** Mr. Stoller **AYES:** 13

RESOLUTION ATTACHED AND MARKED EXHIBIT: 30

ITEM: Uncommon Properties, LLC

APPL.#40716

This Item Was Withheld From Consideration.

LOANS/GRANTS/GUARANTEES

Direct Loan Program

PROJECT: Community Loan Fund of New Jersey

APPL.#40712

LOCATION: New Brunswick/Middlesex

PROCEEDS FOR: Loan Funding

FINANCING: \$1,000,000 Loan

MOTION TO APPROVE: Ms. Kokas **SECOND:** Mr. Stoller
RESOLUTION ATTACHED AND MARKED EXHIBIT: 31

AYES: 13

Local Development Financing Fund Program

PROJECT: 3rd St Holdings, LLC

APPL.#40649

LOCATION: Elizabeth/Union

PROCEEDS FOR: Acquisition of existing building

FINANCING: \$380,000 Loan

MOTION TO APPROVE: Mr. Downes **SECOND:** Mr. McNamara **AYES: 13**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 32

Premier Lender Program

ITEM: Atlantic Stewardship Bank

REQUEST: Approve the addition of Atlantic Stewardship bank as a Premier Lender.

MOTION TO APPROVE: Mr. McNamara **SECOND:** Mr. Downes **AYES: 13**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 33

Hazardous Discharge Site Remediation Fund Program

ITEM: Summary of NJDEP Hazardous Discharge Site Remediation Fund Program projects approved by the Department of Environmental Protection.

PROJECT: Township of Aberdeen (former South River Metals Prod) APPL.#41022

LOCATION: Aberdeen Township/Monmouth

PROCEEDS FOR: Remedial Action

FINANCING: \$1,549,522 (50% Matching Grant)

MOTION TO APPROVE: Mr. Albanese **SECOND:** Ms. Ferrara **AYES: 13**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 34

PROJECT: Township of Aberdeen (former South River Metals Prod) APPL.#41023

LOCATION: Aberdeen Township/Monmouth

PROCEEDS FOR: Remedial Action

FINANCING: \$766,408 (75% Matching Grant)

MOTION TO APPROVE: Ms. Kokas **SECOND:** Mr. Albanese **AYES: 13**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 34

OFFICE OF RECOVERY

Stronger New Jersey Business Grant Program

ITEM: Stronger NJ Business Grant Program Appeal – Sandaway LLC

REQUEST: To approve the Hearing Officer's recommendation to uphold the declination of the Stronger NJ Business Grant for Sandaway LLC

MOTION TO APPROVE: Ms. Kokas **SECOND:** Mr. Downes **AYES: 13**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 35

FOR INFORMATION ONLY: Extension of project completion deadline for the Stronger NJ Business Grant Program

Stronger New Jersey Neighborhood & Community Revitalization Program

ITEM: Stronger NJ Neighborhood & Community Revitalization Program (NCR) – Development and Public Improvement (D&I) Projects – Irvington Township
REQUEST: To approve the Irvington Township application to the next phase of review under the Stronger NJ Neighborhood & Community Revitalization Program, Development and Public Improvement (NCR D&I)
MOTION TO APPROVE: Ms. Kokas **SECOND:** Comm. Kobylowski **AYES:** 13
RESOLUTION ATTACHED AND MARKED EXHIBIT: 36

BOARD MEMORANDUMS

ITEM: Goodmill, LLC
Millville, New Jersey
\$22,500,000 New Market Tax Credit (NMTC) Loan
REQUEST: Consent to a seven (7) month maturity extension on the NMTC loan from September 1, 2015 to April 1, 2016 to coincide with the maturity of the first mortgage loan.
MOTION TO APPROVE: Mr. McNamara **SECOND:** Mr. Downes **AYES:** 13
RESOLUTION ATTACHED AND MARKED EXHIBIT: 37

FOR INFORMATION ONLY: Projects approved under Delegated Authority

NJ Main Street Program: Millville Rescue Squad (P40723)

Petroleum Underground Storage Tank Program: Estate of Dorothy Y. Trombold (P39927)

Premier Lender Program: 125 Halsey Road LLC and Farmplast, LLC (P40567); Alisha and Aryan Realty, LLC (P40614)

Stronger NJ Business Loan Program: Auricle Communications (P40710 & P40234); Brown's Boat Yard, Inc. (P39316 & P40576); Gateway Marina, Inc. (P39514 & P39723); Pastore Music Inc. (P39625)

AUTHORITY MATTERS

ITEM: Marketing Consulting Services
REQUEST: To approve entering into a contract with Princeton Partners, Inc. of Princeton, N.J. to provide marketing consulting services to the New Jersey Economic Development Authority.
MOTION TO APPROVE: Mr. Downes **SECOND:** Mr. McNamara **AYES:** 13

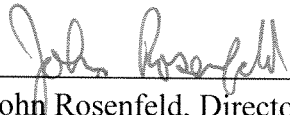
RESOLUTION ATTACHED AND MARKED EXHIBIT: 38

PUBLIC COMMENT

There was no public comment.

There being no further business, on a motion by Ms. Kokas, and seconded by Mr. Downes, the meeting was adjourned at 11:40 am.

Certification: The foregoing and attachments represent a true and complete summary of the actions taken by the New Jersey Economic Development Authority at its meeting.



John Rosenfeld, Director, Bonds and Incentives
Assistant Secretary

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

May 29, 2015

MINUTES OF THE SPECIAL MEETING

Members of the Authority present via conference call: Al Koepp, Chairman; Commissioner Kenneth Kobylowski of the Department of Banking and Insurance; Tom Neff representing the State Treasurer; Colleen Kokas representing the Commissioner of the Department of Environmental Protection; Jeffrey Stoller representing the Commissioner of the Department of Labor and Workforce Development; Public Members: Joseph McNamara, Vice Chairman; Fred B. Dumont, Massiel Medina Ferrara, Public Member Philip B. Alagia, David R. Huber, and Patrick Delle Cava, First Alternate Public Member; and Harold Imperatore, Third Alternate Public Member;

Also present: Melissa Orsen, Chief Executive Officer of the Authority; Timothy Lizura, President and Chief Operating Officer; Deputy Attorney General Bette Renaud; Michael Collins, Governor's Authorities' Unit; and staff.

Absent: Public Members: Charles Sarlo, and William J. Albanese, Sr., Second Alternate Public Member; and Rodney Sadler, Non-Voting Member.

Pursuant to the Internal Revenue Code of 1986, Ms. Orsen announced that this was a public hearing and comments are invited on any Private Activity bond projects presented today.

In accordance with the Open Public Meetings Act, Ms. Orsen announced that notice of this meeting has been sent to the *Star Ledger* and the *Trenton Times* at least 48 hours prior to the meeting, and that a meeting notice has been duly posted on the Secretary of State's bulletin board at the State House.

MINUTES OF AUTHORITY MEETING

INCENTIVE PROGRAMS

Residential Economic Redevelopment and Growth Grant Program

ITEM: Parkers Walk Urban Renewal, LLC

APPL.#39160

REQUEST: To approve the application of a Parkers Walk Urban Renewal, LLC for a project located in Elizabeth, Union County for the issuance of tax credits. The recommendation is to give up to 30% of the eligible costs, not to exceed \$6,792,937 in tax credits based on the budget submitted.

MOTION TO APPROVE: Mr. McNamara **SECOND:** Mr. Downes **AYES:** 12

RESOLUTION ATTACHED AND MARKED EXHIBIT: 1

Mr. Imperatore left the call at this time.

Economic Redevelopment and Growth Grant Program

ITEM: Ameream, LLC, Meadow Amusement LLC and Affiliates

APPL.#37976

REQUEST: To approve the extension of time to submit the required documentation in order to execute their ERG Agreement. The board is asked to approve an interim extension of the date to deliver and review the Required Information under the Applicant's ERG commitment to September 15, 2015.

MOTION TO APPROVE: Mr. Dumont **SECOND:** Ms. Ferrara **AYES:** 11

RESOLUTION ATTACHED AND MARKED EXHIBIT: 2

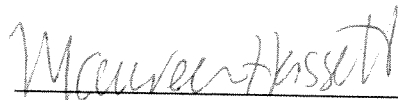
PUBLIC COMMENT

There was no public comment.

There being no further business, on a motion by Mr. McNamara and seconded by Mr. Dumont, the meeting was adjourned at 10:25am.

Certification:

The foregoing and attachments represent a true and complete summary of the actions taken by the New Jersey Economic Development Authority at its meeting.



Maureen Hassett, SVP, Finance & Development
Assistant Secretary



MEMORANDUM

TO: Members of the Authority

FROM: Melissa J. Orsen
Chief Executive Officer

DATE: June 9, 2015

RE: Monthly Report to the Board

EDA SUPPORTED PROJECTS RECOGNIZED AT NAIOP AWARDS GALA

Two EDA-supported projects were recognized for their contribution to the State's economy at the 28th annual NAIOP Commercial Real Estate Awards Gala in Somerset on May 14th. Wenner Bread was selected for the Industrial Deal of the Year award for its move from Long Island to New Brunswick, and Sandoz won Office or Mixed Use Deal of the Year for its new world headquarters in Plainsboro.

Both companies were approved for tax credits under the Grow New Jersey program. Wenner Bread Products, a Long Island-based company, is transforming a vacant building in New Brunswick into a commercial bakery that will be home to 250 employees once the manufacturer completes its relocation to New Jersey. Sandoz, a division of Novartis and a global leader in the generic pharmaceutical sector, had considered a location in Pennsylvania for its headquarters, which includes 292 existing employees and the expected creation of 70 new jobs; the company ultimately leased more than 154,000 square feet of space in Plainsboro, property that had been vacant since 2013.

EDA GEARS UP FOR BIO INTERNATIONAL

EDA has been working closely with the Partnership for Action (PFA), BioNJ and the HealthCare Institute of New Jersey (HINJ) to create a powerful presence for the State of New Jersey at the upcoming BIO International Conference, which will take place at the Philadelphia Convention Center, June 15 – 18. The event, which is expected to attract more than 15,000 attendees from all over the world, presents a high profile opportunity to get the word out about all New Jersey has to offer companies in this key industry.

In addition to a visible presence in the exhibit hall, other plans include a panel discussion on June 16 hosted by EDA's Kathleen Coviello, Director – Technology and Life Sciences, entitled

“Partnering with New Jersey.” The panel will highlight how the State supports biotechnology companies at all stages, helping them start, grow and thrive in the Garden State. Session attendees will hear from representatives of companies that illustrate the array of programs and resources available to the State’s life sciences industry, including Taxis Pharmaceuticals, a CCIT tenant; Aucta Pharmaceuticals, a CCIT tenant and Angel Tax Credit program recipient; Bergen Medical Products, also an Angel Tax Credit recipient; and Angel Medical Systems, which has received support from the Technology Business Tax Certificate Transfer (NOL) Program. The NOL program allows qualified technology and biotechnology companies to sell unused New Jersey net operating losses and research and development tax credits to unrelated profitable corporations to raise cash to finance their growth and operations. The deadline to apply for the fiscal year 2016 NOL allocation is June 30, 2015.

SUMMER SEASON OFF TO A STRONG START

Based on activity during the holiday weekend, shore businesses are off to a bustling start for the third summer following Superstorm Sandy. Several owners of restaurants, motels, amusements and other hospitality-focused businesses, including those supported by Stronger NJ Business grants and loans, have described heavy foot traffic on the boardwalks, and long lines for pizza, ice cream, and other attractions.

As the EDA’s efforts to support Sandy-impacted businesses continue, we are pleased that the outlook for the season is positive. Since the Stronger NJ Business Grant and Loan programs were launched two years ago, the EDA has approved more than \$105 million in funds for over 1,100 small businesses.

FMERA ACTION WILL INCREASE RECREATIONAL OPPORTUNITIES IN REGION

In keeping with FMERA’s goal of establishing a work-live-play community, the Board last month authorized the Authority to lease the Fitness Center and related 7.75-acre parcel from the Army and sublease it to FM Partners, LLC.

FM Partners was the sole bidder on a Request for Offers to Purchase (RFOTP) issued by FMERA in March 2014. With FMERA’s approval of the sublease, FM Partners can move forward with its proposed plans to develop the property. The company anticipates reusing the facility as a fitness/wellness center and intends to create an 80,000-square-foot indoor soccer/recreational field.

CLOSED PROJECTS

Through May 2015, EDA provided more than \$588 million in assistance to 115 projects, supporting the creation of more than 2,600 new jobs and more than 1,700 construction jobs, and leveraging over \$800 million in total public/private assistance.

EVENTS

EDA representatives participated as speakers, attendees or exhibitors at 29 events in May. These included the Newark CEDC Manufacturing Roundtable, the NAIOP 28th Annual Commercial Real Estate Awards Gala in Somerset, the NJ AEE 2015 Energy Forum in New Brunswick, and the Kislak Leadership Excellence Awards Dinner in West Long Branch.



INCENTIVE PROGRAMS



MEMORANDUM

TO: Members of the Authority

FROM: Timothy Lizura
President and Chief Operating Officer

DATE: June 9, 2015

RE: Revisions to Incentive Programs
Proposed Rule Amendments – Grow NJ/Atlantic City

Request:

The members are asked to approve proposed rule amendments (see attached) revising the Grow New Jersey Assistance (Grow NJ) Program to clarify the administration of certain statutory elements that pertain to Atlantic City, including the concept of a tourism destination project, and the definition of a “retained full-time job.”

Background:

The Economic Opportunity Act of 2014, Part 3, enacted as P.L. 2014, c. 63 on October 24, 2014, designated a municipality which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority (CRDA) as the fifth Garden State Growth Zone (GSGZ) eligible for enhanced incentives under the ERG and Grow NJ programs, to help attract new economic development and job growth in Atlantic City.

Under the Grow NJ statute, P.L. 2011, c. 149 (N.J.S.A. 34:1B-242 et seq.), “tourism destination project” means a qualified *non-gaming* business facility that will be among the most visited privately owned or operated tourism or recreation sites in the State, and which is located within the qualified incentive area and has been determined by the Authority to be in an area appropriate for development and in need of economic development incentive assistance, *including a non-gaming business within an established Tourism District with a significant impact on the economic viability of that District* (language in italic added by P.L. 2014, c. 63).

In that regard, a “tourism destination project” may occur anywhere in the State, and as a threshold matter, it must provide projections that it will be among the most visited tourism or recreation sites in the State. However, there are certain characteristics of a tourism destination project located in the Atlantic City Tourism District that are unique: 1) Grow NJ tax credits are allowed to support a final point of sale retail project in a “tourism destination project” located in the Atlantic City Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (this is a rare exception to the

general exclusion of final point of sale retail projects in the Grow NJ program; and 2) as the above underscored language in the definition of “tourism destination project” indicates, the statute requires a tourism destination project in Atlantic City to support the viability of the District as a whole.

Accordingly, staff, in consultation with the Attorney General’s Office, has worked on developing proposed rule amendments that provide a definition for a “non-gaming” business and the criteria to determine if such a business has “a significant impact on the economic viability” of the District.

In order to clarify and administer the revised parts of the statutory definition that address Atlantic City tourism destination projects, staff recommends the following rule amendment establishing a new definition for “non-gaming business” be approved by the Board, as follows:

- “Non-gaming business” means any business, or portion of any business, which is not engaged in the operation of a casino or other gaming as defined in N.J.S.A. 5:12-218. For projects which contain both gaming and non-gaming operations, the number of full-time jobs and amounts of eligible capital investment shall be apportioned based on the proportionate revenue from all non-gaming revenue compared to total revenue, i.e. if gaming revenue is 40 percent of total revenue, then 60 percent of the full-time employees would be deemed non-gaming and in an eligible position for the program.

The proposed revenue approach avoids difficult allocations of working hours of staff that work in both the gaming and non-gaming parts of the facility.

Secondly, staff proposes that the Authority’s determination that a project has “a significant impact on the economic viability” of the District requires, through proposed rule amendment, that new eligible capital investment in building improvements and equipment, in addition to any site acquisition, be in excess of \$50 million, and require a minimum of 250 jobs. Also, projects will also be required to demonstrate several of the following: a projected positive financial benefit to the District, a projected net increase in visitors to the District, an increase in marketing dollars spent on the District, and the addition of unique amenities or services to the existing project or District. The \$50 million and 250 job requirement is consistent with the largest investment required for a mega-project and thus is an appropriate benchmark for “significant impact.”

Finally, staff proposes a revision to the definition of “retained full-time job” that treats jobs relocated to Atlantic City the same as jobs relocated to City of Camden. Generally, in the Grow NJ program, a CEO must certify that (a) any existing full-time jobs are **at risk of leaving the State** or being eliminated and (b) the creation or retention of full-time jobs would not occur but for the award of tax credits and the Board verifies this by separate vote. Before the Economic Opportunity Act of 2014, Part 3, there was only one exception to this general rule: if an applicant were moving to the City of Camden (currently the only GSGZ that qualifies under the Municipal Rehabilitation and Economic Recovery Act) the CEO need only **certify that the grant of tax credits is a material factor in the business decision to make a capital investment and locate in Camden** and that is the statement that the Board verifies. The Economic Opportunity Act of 2014, Part 3, amended this section to treat relocations to Atlantic City the same way as relocations to Camden. The intent of the amendment was to authorize grants of tax credits for full-time jobs that are relocating to either Atlantic City or the City of Camden even if the jobs are not at risk of leaving the State or of being eliminated.

When the Board approved the rule amendments to implement the original Economic Opportunity

Act of 2013, the definition of “retained full-time job” was revised to include, for a project relocating to Camden, any employee previously employed in New Jersey and transferred to the new location. This change was picked up in Economic Opportunity Act of 2014, Part 3.


Therefore, the revision proposed in the “retained full-time job” definition, as follows, is the same revision in the definition that was made previously for Camden – for a project relocating to Atlantic City, the revision includes any employee previously employed in New Jersey and transferred to the new location:

- “Retained full-time job” means an eligible position that currently exists in New Jersey and is filled by a full-time employee but which, because of a potential relocation by the business, is at risk of being lost to another state or country, or eliminated. For the purposes of determining a number of retained full-time jobs, the eligible positions of an affiliate shall be considered eligible positions of the business. For a project located in a Garden State Growth Zone which qualified for the “Municipal Rehabilitation and Economic Recovery Act,” P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et al.) **or a project located in a Garden State Growth Zone which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority,** “retained full-time job” shall include any employee previously employed in New Jersey and transferred to the new location in the Garden State Growth Zone which qualified for the “Municipal Rehabilitation and Economic Recovery Act,” P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et al.) **or in the Garden State Growth Zone which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority.** For the purposes of the certifications and annual reports required pursuant to the incentive agreement, N.J.S.A. 34:1B-245.e or 247.b(2), to the extent an eligible position that was the basis of the award no longer exists, a business shall include as a retained full-time job a new eligible position that is filled by a full-time employee provided that the position is included in the order of date of hire and is not the basis for any other incentive award.

Recommendation:

The Members are asked to approve the proposed rule amendments revising the Grow NJ program to clarify the administration of certain statutory elements that pertain to Atlantic City.

The Members are also asked to authorize staff to submit the proposed amendments for promulgation in the July 20, 2015 edition of the New Jersey Register, subject to final review and approval by the Office of the Attorney General and the Office of Administrative Law (OAL). The Authority will operate with the proposed rule amendments upon submission to OAL, with risk to the applicant if changes are not adopted as proposed.



Timothy Lizura

Attachment

Prepared by: Jacob Genovay

DRAFT

OTHER AGENCIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Authority Assistance Programs

Grow New Jersey Assistance Program

Proposed Amendments: N.J.A.C. 19:31-18.2 and 18.3

Authorized By: New Jersey Economic Development Authority, Melissa Orsen, Chief Executive Officer.

Authority: P.L. 2011, c. 149.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2015- .

Submit written comments by September 18, 2015, to:

Jacob Genovay, Senior Legislative and Regulatory Officer
New Jersey Economic Development Authority
PO Box 990
Trenton, NJ 08625-0990
jgenovay@njeda.com

The agency proposal follows:

Summary

The New Jersey Economic Development Authority (“EDA” or “Authority”) is proposing amendments to the rules implementing the Grow New Jersey Assistance (Grow NJ) Program to clarify the administration of certain statutory elements of the program, as relates to Atlantic City.

Under the Economic Opportunity Act of 2014, Part 3, P.L. 2014, c. 63, a municipality which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority was designated as an additional Garden State Growth Zone (GSGZ) eligible for enhanced incentives under the Economic Redevelopment and Growth (ERG) Program and Grow NJ Program, to help attract new economic development and job growth in Atlantic City.

Pursuant to the Grow New Jersey Assistance Act, P.L. 2011, c. 149 (N.J.S.A. 34:1B-242 et seq.), a “tourism destination project” is defined as a qualified non-gaming business facility that will be among the most visited privately owned or operated tourism or recreation sites in the State, and which is located within the qualified incentive area and has been determined by the authority to be in an area appropriate for development and in need of economic development incentive assistance, including a non-gaming business within an established Tourism District with a significant impact on the economic viability of that District, i.e. Atlantic City.

In order to clarify and administer the revised parts of the statutory definition that address Atlantic City tourism destination projects, the proposed amendments at N.J.A.C. 19:31-18.2 establish a new definition for “non-gaming business” to mean any business, or portion of any business, which is not engaged in the operation of a casino; and to clarify that for projects which contain both gaming and non-gaming operations, the number of jobs and amounts of eligible capital shall be apportioned based on the proportionate revenue from all non-gaming revenue compared to total revenue, i.e. if gaming revenue is 40 percent of total revenue, then 60 percent of the employees would be deemed non-gaming and in an eligible position for the program.

The proposed amendments also revise the definition of “retained full-time job” at N.J.A.C. 19:31-18.2 to include any employee previously employed in New Jersey and transferred to the new location in the GSGZ which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority.

Currently, the Grow New Jersey Assistance Act requires the same chief executive officer (CEO) certification and Authority factual finding for a GSGZ that qualifies for the “Municipal Rehabilitation and Economic Recovery Act,” (MRERA) P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et al.) – currently the City of Camden – and Atlantic City. For a project in the GSGZ that qualifies for MRERA, i.e. in the City of Camden, or in Atlantic City, the CEO must certify that the grant of tax credits is a material factor in the business decision to make a capital investment and locate in the respective municipality. Similarly, the EDA Board’s factual finding for projects in those municipalities is to verify and confirm the business’s assertion that the grant of tax credits is a material factor in the business decision to make a capital investment and locate in the municipality. Accordingly, the proposed amendment would treat jobs relocated to projects in either municipality the same, that is, as retained full-time jobs.

Finally, proposed new N.J.A.C. 19:31-18.3(a)3iv establishes requirements for the determination, pursuant to the definition of “tourism destination project” in P.L. 2014, c. 63, that a tourism destination project, including a non-gaming facility within an established Tourism District, has a significant impact on the viability of that District. Specifically, the project shall have a capital investment in excess of \$50,000,000, excluding any capital investment for site acquisition, at which more than 250 full-time employees of a business are created or retained; and demonstrate a combination of at least two of the following: a positive financial benefit to the District, a net increase in visitors to the District, an increase in marketing dollars spent on the District or the addition of unique amenities or services to the existing project or District.

As the Authority has provided a 60-day comment period in this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments, which will help attract new economic development and job growth in Atlantic City, are intended to have a positive social impact.

Economic Impact

The proposed amendments are intended to help bolster the economy of Atlantic City and Atlantic County by stimulating new economic development. The amendments clarify that jobs relocated to Atlantic City from other locations in the State may count as retained full-time jobs and that awards are authorized in Atlantic City for a non-gaming business with a tourism destination project that supports the economic viability of the Tourism District, with increased capital investment of at least \$50 million and 250 new or retained full-time jobs, and in addition shall demonstrate several of the following: a positive financial benefit to the District, a net increase in visitors to the District, an increase in marketing dollars spent on the District, and the addition of unique amenities or services to the existing project or District.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments are not subject to any Federal requirements or standards.

Jobs Impact

The Authority believes that the proposed amendments will result in retaining existing private sector jobs and stimulating the creation of new private sector jobs in Atlantic City, as well as supporting job growth in the construction industry due to the capital investment requirements of the program.

Agriculture Industry Impact

The proposed amendments will have no impact on the agriculture industry of the State of New Jersey.

Regulatory Flexibility Statement

The Grow NJ Program provides tax credits to eligible businesses that create a minimum of 10 to 35 new, and 25 to 50 retained full-time jobs. The proposed amendments, as discussed in the Summary above, may indirectly benefit small businesses and do not impose any additional compliance requirements as outlined in N.J.S.A. 52:14B-16 et seq. Specifically, eligible businesses will be required to comply with the EDA's standard, on-line application process and regular incentive compliance requirements, however, any costs due to reporting, recordkeeping,

or other compliance requirements on qualifying businesses will be fully offset by the amount of financial assistance received and the only professional services required for such purposes are fully offset by the amount of financial assistance received; and the only professional services required for such purposes are from a certified public accountant.

Housing Affordability Impact Analysis

The proposed new rules and amendments will not impact the amount or cost of housing units, including multi-family rental housing and for sale housing in the State. The proposed amendments clarify the administration of certain statutory elements of the Grow NJ program, as relates to Atlantic City, which provides incentives for businesses to create a minimum of 100 new or retained full-time jobs as well as making capital investments of at least \$20 million in certain incentive areas.

Smart Growth Development Impact Analysis

The proposed new rules and amendments will not impact the number of housing units or result in any increase or decrease in the average cost of housing in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed amendments clarify the administration of certain statutory elements of the Grow NJ program, as relates to Atlantic City, which provides incentives for businesses to create a minimum of 100 new or retained full-time jobs as well as making capital investments of at least \$20 million in certain incentive areas.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions in brackets [thus]):

SUBCHAPTER 18. GROW NEW JERSEY ASSISTANCE PROGRAM

19:31-18.2

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

...

“Non-gaming business” means any business, or portion of any business, which is not engaged in the operation of a casino or other gaming as defined in N.J.S.A. 5:12-218. For projects which contain both gaming and non-gaming operations, the number of full-time jobs and amounts of eligible capital investment shall be apportioned based on the proportionate revenue from all non-gaming revenue compared to total revenue, i.e. if gaming revenue is 40 percent of total revenue, then 60 percent of the full-time employees would be deemed non-gaming and in an eligible position for the program.

...

“Retained full-time job” means an eligible position that currently exists in New Jersey and is filled by a full-time employee but which, because of a potential relocation by the business, is at risk of being lost to another state or country, or eliminated. For the purposes of determining a number of retained full-time jobs, the eligible positions of an affiliate shall be considered eligible positions of the business. For a project located in a Garden State Growth Zone which qualified for the “Municipal Rehabilitation and Economic Recovery Act,” P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et al.) **or a project located in a Garden State Growth Zone which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority,** “retained full-time job” shall include any employee previously employed in New Jersey and transferred to the new location in the Garden State Growth Zone which qualified for the “Municipal Rehabilitation and Economic Recovery Act,” P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et al.) **or in the Garden State Growth Zone which contains a Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219) and regulated by the Casino Reinvestment Development Authority.** For the purposes of the certifications and annual reports required pursuant to the incentive agreement, N.J.S.A. 34:1B-245.e or 247.b(2), to the extent an eligible position that was the basis of the award no longer exists, a business shall include as a retained full-time job a new eligible position that is filled by a full-time employee provided that the position is included in the order of date of hire and is not the basis for any other incentive award.

...

19:31-18.3 Eligibility criteria

(a) In order to be considered for a Grow New Jersey tax credit, the chief executive officer of a business shall demonstrate at the time of application that the business, expressly including its landlord or seller, will make, acquire, or lease a capital investment equal to or greater than, the applicable capital investment required in (a)1 below at which it will retain full-time jobs and/or create new full-time jobs in an amount equal to or greater than, the applicable number in (a)2 below.

1.-2. (No change.)

3. The business shall also demonstrate to the Authority that:

i.-iii. (No change.)

iv. For a non-gaming business facility within an established Tourism District to qualify as a tourism destination project, the facility will have a significant impact on the economic viability of the Tourism District within which it is located by satisfying the following:

(1) Having a capital investment in excess of \$50,000,000, excluding any capital investment for site acquisition;

**(2) At which more than 250 full-time employees of a business are created or retained;
and**

(3) Demonstrating to the satisfaction of the Authority a combination of two or more of:

(A) Positive financial benefit to the District;

(B) A net increase in visitors to the District;

(C) An increase in marketing dollars spent on the District; or

(D) The addition of unique amenities or services to the existing project or District.

(b)-(d) (No change in text.)



MEMORANDUM

TO: Members of the Authority

FROM: Timothy Lizura
President and Chief Operating Officer

DATE: June 9, 2015

RE: Grow New Jersey Program
Revision to Methodology for Due Diligence on Certain Projects in Excess of \$4,000,000/year

Request:

The Members are requested to approve a revision to existing policy to use an internal rate of return analysis to determine the amount necessary to complete a tourism destination project associated with a casino that applies for tax credits in excess of \$4,000,000/year.

Background:

On April 8, 2014, the Board approved a methodology to implement a provision of the Grow New Jersey Assistance Act, N.J.S.A. 34:1B-242 et seq., which requires the EDA to perform additional due diligence on any project applying for tax credits in excess of \$4,000,000/year.

The additional due diligence requires a full-economic analysis of all locations under consideration. Upon completion of the full-economic analysis, pursuant to the Act, the EDA shall award the lesser of the amount of tax credits as calculated via the statutory formula and the amount determined by the Authority "as necessary to complete the project." The methodology approved by the Board uses several factors as part of the calculation, including the project's net benefit to the State, the statutory calculation, and the gap in costs between locations, and the type of project based on location.

Subsequently, the Economic Opportunity Act of 2014, Part 3, P.L. 2014, c. 63 revised the definition of "tourism destination project" to specifically include a non-gaming business for incentives under the Grow NJ Program that is within an established Tourism District with a significant impact on the viability of that District.

As part of a separate request to the Board, staff is proposing a rule amendment that defines "non-gaming business" to mean any business, or portion of any business, which is not engaged in the operation of a casino or other gaming as defined in Atlantic City Tourism District Act.

For an award that exceeds \$4 million annually to a non-gaming business that is associated with a

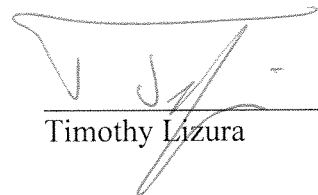
casino, the existing methodology for determining the amount necessary to complete the project approach is generally inapplicable because the casino has no alternative location – it must locate in Atlantic City.

Therefore, staff proposes that the Authority rely on an internal rate of return analysis based on the characteristics of the project to determine what is “necessary to complete the project.” For projects that do not project a sufficient, reasonable market rate of return for the applicant without the award, the Authority may award tax credits in an amount which is the lesser of: 1) the calculated amount of tax credits per employee per the amounts authorized by the statute or 2) the amount necessary to generate sufficient returns for the applicant.

In no event, however, will the award exceed the amount of new eligible capital investment, excluding any costs associated with acquisition; the proposed rule amendments would require a capital investment of at least \$50 million in addition to site acquisition. Staff recommends capping the award to the capital investment (excluding acquisition) for several reasons. First, because of the uniqueness of these projects, any analysis of the amount necessary to generate sufficient returns cannot be based on a robust sampling of similar projects or comparables. Second, the Atlantic City casino market has been and continues experiencing significant volatility. Thus, limiting the award to the eligible capital investment (that is in addition to acquisition costs), which is the actual verifiable amount that the business has at risk in the project, ensures that the award does not exceed the actual amount “necessary to complete the project.” Acquisition costs are excluded because the acquisition is assumed to be at a market rate set by sophisticated business purchasers, and as such, purchasers are assumed to have incorporated into the acquisition cost an economically rational decision as to how much the property as is can return. Therefore, acquisition costs do not present at risk capital with a return gap.

Recommendation:

The Members are asked to approve the proposed policy revision to utilize an internal rate of return analysis as part of the due diligence required for tourism destination projects associated with a casino that apply for a tax credit award in excess of \$4,000,000/year.



Timothy Lizura

Prepared by: Jacob Genovay

**ECONOMIC REDEVELOPMENT AND GROWTH (ERG)
PROGRAM**

The following summary is provided for information only. Full eligibility and review criteria can be found in the program's rules.

ECONOMIC REDEVELOPMENT AND GROWTH (ERG) PROGRAM

Created by law in 2012, and substantially revised through P.L. 2013, c. 161, the intent of this program is to provide State incentive grants to a developer, or non-profit organization on behalf of a qualified developer, to capture new State incremental taxes derived from a project's development to address a financing gap, with \$600 million authorized for qualified residential projects.

Per N.J.S.A. 34:1B-207 et seq. / N.J.A.C. 19:31-4 and the program's rules, the applicant must:

- Have a redevelopment project that is located in a qualifying area and not have begun any construction at the project site prior to submitting an application, except: if the EDA determines the project would not be completed otherwise; or if the project is undertaken in phases, a developer may apply for phases which construction has not yet commenced.
- Demonstrate to the EDA that 1) the project shall be constructed in accordance with certain minimum environmental standards; 2) except with regards to a qualified residential project, the project will yield a net positive benefit equaling at least 110% of the grant assistance to the State of 75% of the useful life of the project, not to exceed 20 years; and 3) that a financing gap exists.
- Meet a 20% equity requirement.

Staff Review:

- A comprehensive net benefit analysis is conducted to ensure the project has a positive net benefit to the State of at least 110%. The economic impact model used by the EDA includes multipliers from the RIMS II data base, published by the US Department of Commerce, along with internal econometric analysis and modeling to assess economic outputs, impacts and likely jobs creation.

Amount of award based upon:

- Up to 75% of annual incremental State tax revenues or 85% in a Garden State Growth Zone (GSGZ) generated by the project over a term of up to 20 years, provided the combined amount of reimbursements do exceed 20% of total project cost, or 30% in a GSGZ.
- The maximum amount of any grant, including any increase in the amount of reimbursement, shall be up to 30% of total project cost, except for projects in a GSGZ, which may be up to 40%.
- Bonus amounts of up to 10% of total project cost are available if the project is: In distressed municipality which lacks adequate access to nutritious food and will include a supermarket, grocery store or prepared food establishment; In distressed municipality which lacks adequate access to health care/services and will include a health care and services center; Transit project; Qualified residential project with at least 10% of residential units reserved for moderate income housing; In highlands development credit receiving area or redevelopment area; Disaster recovery project; Aviation project; Tourism destination project; or Substantial rehabilitation or renovation of an existing structure(s).

Qualified Residential Projects:

The law authorizes \$600 million in incentives for qualified residential projects that the EDA administers as tax credits pursuant to P.L. 2013, c. 161, as follows: 1) \$250 million for projects within 8 southernmost counties, of which: \$175 million for projects in Camden; \$75 million for projects in municipalities with a 2007 MRI Index of 400 or higher; and \$250 million for projects in: Urban Transit Hubs that are commuter rail in nature, GSGZ, Disaster recovery projects, and SDA municipalities located in Hudson County that were awarded State Aid in FY 2013 through the Transitional Aid to Localities Program; 2) \$75 million for projects in distressed municipalities, deep poverty pockets, highlands development credit receiving areas or redevelopment areas; and 3) \$25 million for projects located within a qualifying ERG incentive area



MEMORANDUM

To: Members of the Authority

From: Timothy Lizura
President and Chief Operating Officer

Date: June 9, 2015

RE: **GS FC Jersey City Pep 1 Urban Renewal, LLC**
Residential Economic Redevelopment and Growth Grant Program (“RES ERG”)
P #40590

Request

As created by statute, the Economic Redevelopment and Growth (ERG) Program offers state incentive grants to finance development projects that demonstrate a financing gap. Applications to the ERG Program are evaluated to determine eligibility in accordance with P.L. 2013, c. 161 and as amended through the “Economic Opportunity Act of 2014, Part 3,” P.L. 2014, c. 63, based on representations made by applicants to the Authority. Per N.J.S.A. 52 :27D-489a et seq. / N.J.A.C. 19:31-4 and the program’s rules, developers or non-profit organizations on behalf of a qualified developer, must have a redevelopment project located in a qualifying area, demonstrate that the project has a financing gap, meet minimum environmental standards, meet a 20% equity requirement, and, except with regards to a qualified residential project, yield a net positive benefit to the state. With the exception of residential ERG projects, grants are made annually based on the incremental eligible taxes actually generated as a result of the project.

The Members are asked to approve the application of GS FC Jersey City Pep 1 Urban Renewal, LLC (the “Applicant”) for a Project located at 430 Marin Boulevard Jersey City, Hudson County (the “Project” which is also known as Hudson Exchange), for the issuance of tax credits pursuant to the RES ERG program of the Authority as set forth in the New Jersey Economic Opportunity Act of 2013, P.L. 2013, c. 161 (“Act”).

The total costs of the Project are estimated to be \$222,634,000 and of this amount \$203,657,000 are the estimated eligible costs under the RES ERG program. The recommendation is to award 19.64% of actual eligible costs, not to exceed \$40 million. Note that once actual eligible project

costs have been certified by the CPA, the maximum RES ERG tax credits are capped at this 19.64% figure. The Applicant is eligible for a bonus of an additional 10% (for a total of 30%) as they meet two of the possible criteria; A] plan to reserve 20% of the residential units for moderate income housing and B] project is deemed a transit project as it is located within ½ mile of a rail station (the site is adjacent to the Harsimus Cove Light Rail Transit station and within 3/10 of a mile from the Pavonia/Newport PATH station).

GS FC Jersey City Pep I Urban Renewal, LLC is a recently formed entity for the purposes of affecting a payment in lieu of taxes and will be the recipient of the RES ERG tax credits. This entity is 100% owned by GS FC Jersey City Pep 1, LLC (“GS FC JC”) which is a joint venture between G & S Investors (“G & S”) and Forest City Enterprises (“FCE”) who are the development partners of the Project with FCE being the managing member of the partnership.

Formed in 1982, G & S is a developer, lessor and manager of income producing properties in the tri-state area. G & S owned the project site until the sale to the Applicant in December of 2014. FCE is an owner, developer and manager of a diverse portfolio of premier real estate property throughout 26 states and was established in 1920.

Project Description

The project site encompasses approximately 1.25 acres and has an existing 21,200 square foot building where a Pep Boys Auto Service operates. This store has a lease with the property owner and executed an agreement to vacate the premises once the proposed development commencing construction. The project includes new construction of a 35-story building containing 421 residential units, 10,126 square feet of ground level retail space, a 144,253 square foot parking garage containing 264 parking spaces and a publicly accessible plaza. The gross building area is 496,077 which includes 31,293 square feet of amenity space. Zoning for the proposed development is in place via the Harsimus Cove Station Redevelopment Plan and the Applicant was awarded final site plan approval on February 3, 2015 (which was memorialized on March 10, 2015).

The unit mix will consist of 78 junior one-bedroom units, 194 average one-bedroom units, 7 large one-bedroom units, 25 den one-bedroom units, 84 two-bedroom units and 33 large two-bedroom units. The project will reserve 20% of the units (85 units across all bedroom types) to be moderate income (households earning between 50% to 80% of area median income). The proposed net rents for market rate units are anticipated to range from \$2,325 to \$2,900 per month for one-bedroom units, \$3,400 to \$3,500 per month for two-bedroom units. The moderate income rents are anticipated to range from \$954 to \$989 for one-bedroom units to \$1,194 for two-bedroom units. The 264 parking spaces includes 31 dedicated to the retail (expectation is two tenants) with the remainder for the residential units.

Unit finishes and amenities include: quartz/caesarstone counter tops, GE/ whirlpool appliances, hardwood plank flooring, electric mirror bathroom vanity, ceramic tile bathroom, Cantrio bath vanity sinks. Common area amenities will be located on the 8th floor. Interior amenities will include a game room/ resident lounge, an interior lounge spaces, library, conference/ kitchen room, yoga / flex studio space, cardio/ gym. Exterior amenities on the 8th floor roof deck will include a pool, hot tub, grassy amphitheater, tree allay, grilling, outdoor movie viewing. A concierge service is also included.

The Project will be managed by Forest City Residential Group (“FCR”) which is one of the business units of FC. FCR has over 17,000 apartment units under ownership/management plus another 12,000 units of military housing and \$8.8 billion in assets evidencing extensive experience in managing multifamily projects. Their portfolio consists of units in urban and suburban communities, adaptive re-use, supported living properties and housing for America’s military families.

Roux Associates, Inc. based in Islandia, NY, will be the designated Environmental Engineering firm as it relates to the Green component of the project. The Applicant expects to comply with Green Building requirements via the NJBPU pay-for-performance program. Roux is also engaged as the Licensed Site Remediation Professional to oversee the environmental compliance of the site.

As of 5/15/15, the project has 70% of their construction documents with expectation to reach 100% by the end of June with bids and contract award anticipated by the end of July. Construction is expected to begin in August of 2015, along with the closing on financing with an anticipated completion of the project in the third quarter of 2017. This date is consistent with the July 28, 2018 required date of construction completion and issuance of certificate of occupancy.

Although applicants for the RES ERG program are not required to maintain certain employment levels, it is estimated that this Project, per the Applicant, will create approximately 300 temporary construction jobs during rehabilitation and 15 full time positions created at the project site.

Project Ownership

The Applicant is 100% owned by GS FC Jersey City Pep 1, LLC which in turn is owned 50/50 by Forest City Residential Group, LLC and G & S Investors/Jersey City L.P.

Forest City Residential Group, LLC is a wholly owned subsidiary of Forest City Enterprises, Inc. FC was founded in 1920, headquartered in Cleveland, Ohio and whose shares are publically traded on the NYSE. Their diverse real estate portfolio of 83 retail, office, arena, hotel and mixed use properties combined with over 40,000 apartment/military housing units with core markets of Boston, Chicago, Dallas, Denver, Los Angeles, Philadelphia and the greater metropolitan areas of New York City, San Francisco and Washington, D.C. F C operates the Barclays Center, a sports and entertainment arena in Brooklyn, NY and has an equity investment in The Nets, a member of the National Basketball Association.

G & S has owned the project site since 2002 and in December of 2014 sold the property to the joint venture entity, GS FC JC.

G & S is owned 1% by Jersey City Associates, 9% by Lucas Traub and 90% by Gregg Wasser. Since commencing operations in 1982, G & S has developed over 1.5 million square feet of retail space in the tri-state area. G & S owns and manages over 800,000 square feet of space including 500,000 square feet in Port Chester, NY, 140,000 square feet in Livingston, NJ, 125,000 square feet in Farmingdale, NY and 243,000 square feet in Jersey City, NJ.

An independent third party appraisal was prepared by Cushman & Wakefield which reported an “as is” value of the land at \$23.3 million as of May 4, 2015.

Project Uses

The Applicant proposes the following uses for the Project:

<i>Uses</i>	<i>Total Project Costs</i>	<i>RES ERG Eligible Amount</i>
Acquisition of Land and Buildings	\$ 18,440,000	\$ 18,440,000
Construction & Site Improvements	149,601,000	149,601,000
Professional Services	12,388,000	9,742,000
Financing & Other Costs	18,248,000	9,602,000
Contingency	16,272,000	16,272,000
Development Fee	7,685,000	0
TOTAL USES	\$ 222,634,000	\$ 203,657,000

ERG eligible project costs exclude ineligible costs aggregating \$18,977,000, which includes the developer fee of \$7,685,000, EB 5 equity interest until cash flow breakeven of \$1,966,000, FC overhead of \$1,646,000, marketing of \$1,000,000, fees to FC of \$2,568,000 and interest reserves of \$4,112,000.

<i>Sources of Financing</i>	<i>Amount</i>
First Mortgage Loan (Pacific Life)	\$ 128,400,000
Mezzanine Loan (Civitas)	33,000,000
RAB [A]	5,000,000
Equity:	
Applicant Equity (B)	56,234,000
Total	\$ 222,634,000

[A] This bond is expected to be purchased by the applicant and/or a related entity.

[B] Equity amounts to 25% of total project costs which is in excess of the minimum 20% requirement of the RES ERG program.

The Applicant has included the sale of the RES ERG tax credits of \$40 million at 90 cents per dollar for an annual cash flow of \$3.6 million for ten years. The Applicant provided a term sheet from Pacific Life for up to \$128,400,000 as a construction and mini perm loan. Term is 14 years on a 30 year amortization with first seven years interest only at a rate fixed at 240 basis points over the 14 year US Treasury rate with a 4.5% floor. Additionally, the Applicant provided a conditional commitment dated April 14, 2015 from Civitas Capital Management, LLC for up to \$33 million in funding (mezzanine loan/preferred equity investment under the EB-5 Program) towards the proposed project. The loan is repayable interest only at 5.5% fixed for five years with two twelve month extensions available at 6.5% and 7.5%, respectively and is subordinated to the construction loan.

Gap Analysis

EDA staff has reviewed the application to determine if there is a shortfall in the project development economics pertaining to the return on the investment for the developer and their ability to attract the required investment for this project. Staff analyzed the pro forma and projections of the project and compared the returns with and without the RES ERG over 12 years (two years to build and 10 years of cash flow).

Without ERG	With ERG
Equity IRR 4.70%	Equity IRR 9.34%

As indicated in the chart above, the project would not otherwise be completed without the benefit of the ERG. **With the benefit of the ERG, the Equity IRR is 9.34% which is moderately below the Hurdle Rate Model provided by EDA's contracted consultant Jones Lang LaSalle which indicates a maximum IRR of 11.18% for a residential project located in Jersey City.**

Other Statutory Criteria

In order to be eligible for the program, the Authority is required to consider the following items:

The economic feasibility and the need of the redevelopment incentive agreement to the viability of the project.

As per the Residential Market Study dated February 2015 prepared by Neill Consulting Group and in conjunction with the Cushman and Wakefield appraisal report dated May 2015, the existing competitive housing set, the key planned additions to the market located proximate to the proposed development, the vacancy/occupancy trends, rental rates and anticipated growth, and absorption rates have been analyzed and incorporated into the pro-forma submitted for the proposed project. While there has been a substantial amount of new construction in Jersey City since 2000, the proportion of housing stock that was built prior to 1940, still remains higher than that of new construction. The construction of housing on the land will improve the social distress by building upon the city's redevelopment goals and social objectives.

The broader Harsimus Cove Station Redevelopment Plan ("HCRP") call for a total of six million square feet of residential apartments (5,300 units), 341,000 square feet of retail, and 2.5 acres of open space spread over 18 acres. The development will reconnect this important site to the surrounding urban fabric by breaking down an existing super-block into six smaller-scale city blocks and reintroducing a pedestrian-friendly street grid along with active ground floor uses that create a vibrant 24-hour community. This project supports local and regional planning goals, as evidenced most clearly in the project's alignment with the HCRP, originally adopted in 1983 and most recently amended in October, 2014. That plan is guided by a number of policy objectives including innovative mixed-use development, an integrated healthy, vibrant, livable neighborhood, a clearly articulated and rationally designed open space system, and the construction of roads, infrastructure, open space and other public improvements which benefit more than one development site. To accomplish these objectives, the HCRP established a number of proposed redevelopment actions including replacement of one story stand-alone retail structures with multi-use, multi-story structures situated on new city blocks, implementation of the new blocks in a phased fashion, and assembly into developable parcels the vacant and underutilized land, underutilized parking lots.

The proposed project meets these and other of the planning principals and redevelopment guidelines articulated in the HCRP. The first phase of the project, for which the applicant has applied for the RES ERG, is a mixed-use residential project that will replace big-box retail and begin the area's transformation to a vibrant mixed-use environment. This first phase will also include a 15,000+ square foot public open space plaza that will form the cornerstone of the applicant's ambitious plans for over 2 acres of green and park space. This phase also begins to re-align the street grid and to put in the infrastructure required to tie the broader redevelopment into the existing street grid. The development team has undertaken a participatory and interactive dialogue with the community to ensure that the existing neighboring residents are heard and view the project as a positive addition to the neighborhood. The developers conducted both large format public meetings and individual engagement during the entitlement process. This included presentations, working sessions, the distribution of surveys, and one-on-one meetings with interested residents. Specific feedback was incorporated into the project plans. At the site plan approval hearing, multiple residents voiced their support via letters and public comment, including the local councilperson for the project. This dialogue will continue through the multi-phase redevelopment process. A letter of support from the Mayor of Jersey City has been provided for this project.

The project also clearly aligns with the State's planning goals and in fact meets a number of the Economic Opportunity Act of 2014's residential bonus goals. It is located in one of the State's Urban Transit Hub municipalities, a focus of recent economic development legislation. The project will include 20% of the units for moderate income households, i.e., those households that make between 50-80% of the area's median income, and the project is located adjacent to the Harsimus Cove light rail station, aligning with the State's emphasis on smart growth and transit oriented development. Last, Jersey City is the state's fastest growing large city and this project will not only help foster increased urban growth and stability in one of New Jersey's largest urban centers, but will do so while providing housing for moderate income renters for whom there are fewer housing options.

Per the project's financial returns as mentioned earlier and to obtain the funding necessary to develop this project, there is a demonstrated need for the RES ERG tax credit incentive.

The Project appears to be economically feasible based on the track record of the applicant and their development team as well as the committed funding sources for the entire cost budget which is available to this project.

The degree to which the redevelopment project within a municipality which exhibits economic and social distress, will advance State, regional, local development and planning strategies, promote job creation and economic development and have a relationship to other major projects undertaken within the municipality.

Jersey City is the largest municipality in Hudson County with a population of 262,146 (2014 U.S. Census Bureau Population Estimate). This represents a 17% growth over the 2010 US Census Bureau data making the municipality the fastest growing in New Jersey and a symbol of the state's reinvigorated urban core. Jersey City is located on the South Eastern section of Hudson County; the city's proximity and convenient access to and from Manhattan (NY) continues to make Jersey City an attractive location for corporations relocating business operations in the greater metropolitan area. Jersey City can be characterized as a well-developed, urban community with mixed type uses.

Jersey City contains approximately 19.2 square miles and is surrounded by Hoboken, Union City and North Bergen to the north, Secaucus and Newark Bay to the west, Bayonne to the south and the Hudson River and New York City to the east. Currently, Jersey City is the second largest city in the state. In recent years, the city has steadily narrowed the gap in population between itself and Newark, giving rise to the likelihood that Jersey City will soon become the largest city in New Jersey. Historically, Jersey City has been a major industrial center. Manufacturers include pharmaceuticals, electrical equipment, iron products, chemicals and processed food. In recent years industrial development has waned and a transition to office and residential uses has occurred, particularly in the Waterfront District. Residential development has been the primary form of new construction in the past 10 years. Jersey City has multiple neighborhoods, each with a different aesthetic and architectural style. Downtown Jersey City includes both the Waterfront District and the Historic Downtown District. The subject is located in the Waterfront District, which includes the neighborhoods of Newport, Harsimus Cove, Paulus Hook, Port Liberte, and Exchange Place. The neighborhoods with the highest rental rates within Jersey City are found along the waterfront, with rents decreasing further from the Hudson River. Income levels and rental rates decrease significantly to the west of Route 78.

Redevelopment of the Hudson River waterfront has been underway for more than a decade and is largely due to its proximity and accessibility to lower Manhattan, in conjunction with large quantities of underutilized, industrial land. The Waterfront District has attracted numerous banks, stock brokerage, and commodities firms from Wall Street and downtown Manhattan office buildings. These financial services firms have relocated back office personnel to large blocks of office space along the Hudson River waterfront. Significant revitalization efforts over the past 15 years have resulted in an increasingly desirable residential environment. In particular, a new mass transit option, the Hudson-Bergen Light Rail, has sparked development of multi-family properties throughout the Waterfront District. The system, which began operating its first segment in April 2000, has expanded in phases and was completed with the opening of its southern terminus on January 31, 2011. The light rail serves twenty-four stations along a 21-mile stretch. In the Waterfront District, the light rail is primarily in proximity to the waterfront. The light rail system, as well as the NJTransit PATH system, has drawn developers to the Waterfront District, particularly in proximity to the Hudson River. Views of the Hudson River and Manhattan have a positive impact on rental rates in this market.

Population growth in Waterfront District continues to significantly out-pace the growth patterns of Jersey City in total, as well as the county and state. This trend is anticipated to continue over the next five years. Based on the above statistical data, the subject's market is an upper-income area, with area incomes well exceeding those of the City, County and State. The subject's immediate area has a lower percentage of owner occupied housing units when compared with the city, the county and state. Within the subject's neighborhood, new residential development is comprised primarily of mid- and high-rise, multi-family properties. In terms of education, the Waterfront District has a highly educated population. Within a one-mile radius of the subject, approximately 75 percent of the population has a bachelor degree or higher, compared to 28 percent for the city, 25 percent for the county and 24 percent for the state. Geographically Jersey City has excellent access to the surrounding communities and region. The city has direct access to the New Jersey Turnpike extension, also known as I-78. Interstate 78 leads directly to the Holland Tunnel providing access to New York City. Route 440, the Garden State Parkway and Route 3 are located within or in close proximity to the city. Mass transportation to nearby employment centers is excellent. Major rail lines travel from PATH stations in Manhattan to Hoboken, Jersey City and Newark. In addition, there is an extensive system of commuter buses traveling to Manhattan via

the Lincoln and Holland Tunnels to Port Authority bus terminal and the aforementioned Hudson-Bergen Light Rail. Proximity to light rail stations, and in particular, PATH stations, has a positive effect on rental rates in this market.

The subject is part of the first phase of the HCRP. The mission of the plan is to replace the existing one story stand-alone retail structures with multi-use, multi-story structures with ground floor retail. These buildings are to be located on planned public thoroughfares that will connect into the existing City street grid. In addition, a new bikeway is planned, along with park land and open plazas spaces. The subject is located in the Harsimus Cove West, which has a potential 12 residential towers planned for the existing shopping center that is currently anchored by Shop-rite, B.J.'s Wholesale and Bed Bath and Beyond. A potential 5,713 units are approved based on the redevelopment plan, including the subject's proposed improvements. Neighborhood land uses include a mix of office, residential apartments and condominiums, retail, lodging, surface parking lots, and the Newport-Pavonia PATH station. The office portion of the neighborhood consists of, mid-rise, Class A and B office buildings within the Newport section of Jersey City, which is adjacent to the north of the subject's Harsimus Cove development area. Residential development consists of multi-family apartment and condominium buildings located in mid and high-rise towers. Ground floor retail in proximity to the subject includes a mix of bar/restaurants and a host of locally-owned retailers catering to the neighborhood population. In addition, many well-known retailers are within walking distance of the subject.

Currently, the subject is within a shopping center known as Metro plaza, which is anchored by Shop-rite, B.J.'s Wholesale and Bed Bath and Beyond. Immediately to the west of the subject is a free-standing bank. Adjacent to the east of the subject are tracks for the Hudson-Bergen Light Rail, followed by a high-rise residential tower with ground floor retail known as The Monaco and a mid-rise, Double Tree hotel. To the north of The Monaco is a high-rise hotel operated under the Westin Flag. Immediately south of the Double Tree hotel is a development site approved for 119 residential units. Following this parcel is a residential tower known as Marbella. A second tower for Marbella, which will share the parking garage with the existing building, is currently under construction. This tower is to contain 311 units and 2,214 square feet of ground floor retail. Immediately north of the subject is Newport Centre Mall, which is a 1.16 million square foot regional mall constructed in 1987 and expanded in 2002. The mall is anchored by JC Penny, Macy's Sears, and a movie theater. In-line tenants include multiple well-known retailers, including Ann Taylor, The Gap, and the Disney Store. To the south of the subject is the balance of Metro Plaza, followed by Waldo Lofts (82-unit condominium) and a 108-unit residential tower located at 148 First Street and a 345-unit residential tower that is currently under construction. There are also two vacant parcels of land, one of which is approved for 281 units and 9,873 square feet of retail space. Third party research included investigation of potential near-term changes in the apartment market that would impact the subject property. Land use changes include units under construction, potential planned development and units that are proposed to the planning board. According to the Jersey City Downtown Development Map dated January 17, 2014, excluding the subject's redevelopment area, there are 4,477 units under construction, 13,248 planned and 4,369 seeking approval. Although many of the planned units have been planned for many years and never built, there is a significant amount of supply coming on line in the near future. Although the new supply may have an adverse affect on rental rates and occupancy, those properties with walk able access to PATH stations similar to the subject are the most desirable in this market. Offsetting a portion of the supply risk in the Waterfront District is the fact that, within a one-mile radius of the subject, average household incomes have increased at a much higher rate than the city, county or state. In addition, households have been increasing at an average rate of

3.81 percent per year, which is well above the average for the city, county and state. In addition, the appraiser notes that additional demand for the Waterfront District will be created by escalating rents in New York City and the outer boroughs, in conjunction with increased density and demand for office space in Downtown and Midtown Manhattan. Furthermore, as the Waterfront District continues to revitalize, and supporting retail and services becomes more prevalent, is our opinion that in-migration from Manhattan and Brooklyn will continue at a stronger pace. Current risk factors in the Waterfront District stem primarily from potential oversupply in the near term. However, new development will help the overall desirability of the subject's specific location over time. All factors considered, the neighborhood is a desirable residential location and the long term outlook for the neighborhood is good.

Recommendation

Authority staff has reviewed the application for GS FC Jersey City Pep 1 Urban Renewal, LLC and finds that it is consistent with eligibility requirements of the Act. It is recommended that the Members approve and authorize the Authority to issue a commitment letter to the Applicant.

Issuance of the RES ERG tax credits are contingent upon the Applicant meeting the following conditions:

1. Financing commitments for all funding sources for the Project consistent with the information provided by the Applicant to the Authority for the RES ERG; and
2. Evidence of site control and site plan approval for the Project; and
3. Copies of all required State and federal government permits for the Project and copies of all local planning and zoning board approvals that are required for the Project.
4. Evidence that the Project complies with N.J.A.C. 19:31-4.3(a) (3).

Tax Credits shall be issued upon:

1. Completion of construction and issuance of a Certificate of Occupancy (no later than July 1, 2018; and
2. Submission of a detailed list of all eligible costs, which costs shall be certified by a CPA and satisfactory to the NJEDA; and

It is recommended that the members authorize the CEO of the EDA to execute any assignment agreements necessary to effectuate this transaction

The New Jersey Economic Opportunity Act of 2013 provides a total of \$600 million in tax credits to be utilized towards eligible residential based projects. This allocation is further separated into five additional allocations to assist projects meeting certain geographic and/or economic criteria. This project site is within one half mile of a transit station in Jersey City, Hudson County, thereby qualifying to be funded under the allocation for projects which are urban transit hubs that are commuter rail in nature. The initial total of this allocation was \$250 million. After subtracting the amount of tax credits for all projects being recommended for approval at this board meeting dated June 9, 2015 leaves a balance of \$57.2 million in tax credits remaining.

Total Estimated Eligible Project Costs: \$203,657,000.

Eligible Tax Credits and Recommended Award: 19.64% of actual eligible costs, not to exceed \$40,000,000 to be paid over ten years.



Timothy Lizura

Prepared by: Michael Conte



MEMORANDUM

To: Members of the Authority

From: Timothy Lizura
President and Chief Operating Officer

Date: June 9, 2015

RE: **North 25 Urban Renewal Preservation, LP**
Residential Economic Redevelopment and Growth Grant Program (“RES ERG”)
P #40265

Request

As created by statute, the Economic Redevelopment and Growth (ERG) Program offers state incentive grants to finance development projects that demonstrate a financing gap. Applications to the ERG Program are evaluated to determine eligibility in accordance with P.L. 2013, c. 161 and as amended through the “Economic Opportunity Act of 2014, Part 3,” P.L. 2014, c. 63, based on representations made by applicants to the Authority. Per N.J.S.A. 52 :27D-489a et seq. / N.J.A.C. 19:31-4 and the program’s rules, developers or non-profit organizations on behalf of a qualified developer, must have a redevelopment project located in a qualifying area, demonstrate that the project has a financing gap, meet minimum environmental standards, meet a 20% equity requirement, and, except with regards to a qualified residential project, yield a net positive benefit to the state. With the exception of Residential ERG projects, grants are made annually based on the incremental eligible taxes actually generated as a result of the project.

The Members are asked to approve the application of North 25 Urban Renewal Preservation, LP (the “Applicant”) for a Project located in Trenton, Mercer County (the “Project”), for the issuance of tax credits pursuant to the RES ERG program of the Authority.

The total costs of the Project are estimated to be \$29,374,615 and of this amount \$22,052,435 are eligible costs under the RES ERG program. The recommendation is to give up to 40% of actual eligible costs, not to exceed \$8,820,974. A residential project is eligible to receive a RES ERG tax credit of up to 20% of the total eligible project costs. North 25 Urban Renewal Preservation, LP is also eligible for a bonus of an additional 20% (for a total of 40%) because the project is a substantial renovation of an existing apartment complex and also because the project is located in a Garden State Growth Zone.

Project Description

North 25 Housing apartment project is an existing 233-unit section 8 multifamily development located at 260 N. Willow Street in Trenton, Mercer County. The project consists of 145 one-bedroom units, 38 two-bedroom units, 30 three-bedroom units, and 19 four bedroom units. The project is currently 99% occupied. The project was built in 1979 and in major need of renovations.

The scope of renovations includes the rehabilitation of all family units, exterior repairs, major system upgrades, and site improvements. Unit improvements will include flooring replacement; new window coverings; and new kitchens including cabinets and countertops, and Energy star appliances. All required HVAC systems will be rehabilitated, including new central boiler and water heater replacements. The roof will be replaced and the elevator will be modernized. According to the applicant relocation will not be necessary.

The applicant has entered into a purchase and sales agreement with the entity North 25 associates for a purchase price of \$6,500,000. This transaction is not arms-length. North 25 Associates is an affiliate of North 25 Housing Corporation. There have been no other transfers of the property in the past three years and the subject is not currently listed for sale. Per the appraisal report prepared by a Novogradac & Company LLP dated August 1, 2014, the “as is” value of the property is \$9,800,000. Included in the \$6,500,000 purchase price is \$593,035 of proceeds which North 25 Housing Corporation will collect and is considered ineligible in the calculation of the ERG award.

The property is located within a Smart Growth Area. This Project will comply with the New Jersey Housing and Mortgage Finance Agency’s (“NJHMFA”) Energy Star Equivalency Program. An estimated completion date for the rehabilitation of the project complies with the RES ERG deadline of July 28, 2018.

Although applicants for the RES ERG program are not required to maintain certain employment levels, it is estimated that this Project, per the Applicant, will create approximately 80 temporary construction jobs during rehabilitation and 6 full time positions created at the project site as a result of the ERG subsidy.

Project Ownership

The Applicant is a single purpose entity that will be 99.99% owned by an Investor Member LLC to be created through Boston Financial Management Company and 0.01% by North 25 Preservation GP LLC, a single purpose entity. The Sole managing member of North 25 Preservation GP LLC will be North 25 Housing Corporation which is a 501(c) (3) non-profit corporation. Southport Financial Services, Inc. is acting as the developer of the project however they will not have any ownership interest in the applicant or property.

Project Uses

The Applicant proposes the following uses for the Project:

<i>Uses</i>	<i>Total Project Costs</i>	<i>RES ERG Eligible Amount</i>
Acquisition of Land and Buildings	\$ 6,500,000	\$ 5,906,965
Construction & Site Improvements	11,930,670	11,930,670
Professional Services	552,500	552,500
Financing & Other Costs	6,550,892	2,420,652
Contingency	1,241,648	1,241,648
Development Fee	2,598,905	
TOTAL USES	\$ 29,374,615	\$ 22,052,435

ERG eligible project costs exclude ineligible costs aggregating \$7,322,180, which include the developer fee of \$2,598,905, Reserve Escrows of \$4,130,240 and ineligible related party proceeds from sale of property in the amount of \$593,035.

<i>Sources of Financing</i>	<i>Amount</i>
Conduit Loan Perm Debt	\$ 14,850,000
ERG Monetization	5,027,955
Equity	
LIHTC	7,926,000
Deferred Developer Fee	1,570,660
Total	\$ 29,374,615

The Applicant is anticipating a commitment at NJHMFA's July board meeting. The project did receive from NJHMFA a Declaration of Intent in the amount of \$13 million for construction and permanent financing on July 10, 2014. As part of its approval, NJHMFA reviews and approves all components of the financing in addition to the development fee.

As part of its permanent financing structure the Applicant has received a commitment from the tax credit syndicator, Boston Financial, who will be providing the Low Income Housing Tax Credit equity in the amount of \$7.9 million and ERG credit funds of \$5.0 million. Boston Financial's commitment letter states that the pricing of the ERG credits is greater than \$.75 on a present value basis.

Development Fee

The amount of developer fee allowed for eligible rehabilitation or new construction costs will be limited to 15% of total development costs excluding land, pre-operational expenses, and escrows and reserves pertaining to permanent takeout financing. Total development fee includes all hard and soft costs, in addition to applicable financing fees. Developer fee at project construction completion or stabilization shall not exceed 8% (out of the 15% total) with the balance being deferred and taken through projected cash flow. This is consistent with NJHMFA's approach.

The Applicant has demonstrated to both NJHMFA and EDA that the project will not generate sufficient cash flow to return the entire developer fee within five years of project stabilization. The maximum developer fee of 15% for this project will not be achieved until year 8.

Residential ERG projects are required to have a minimum of 20% equity in the capital stack based on the total projects costs. The three equity sources of capital in North 25 are deferred developer fee of \$1.57 million and LIHTC equity syndicated by Boston Financial in the amount of \$7.93 million which collectively is 32% of total project costs.

Other Statutory Criteria

In order to be eligible for the program, the Authority is required to consider the following items:

The economic feasibility and the need of the redevelopment incentive grant agreement to the viability of the redevelopment project.

The North 25 project was originally constructed in 1979. Renovations will update an aging building and provide housing to the residents of Trenton, NJ. Post-completion, the project is anticipated to operate with sufficient cash flow for the foreseeable future in conjunction with the Applicant's Section 8 contract. However, without the State incentive, the Applicant represents that the Project is not feasible due to the initial funding gap.

The Authority is in receipt of a Market Feasibility Analysis dated August 01, 2014 on the Project prepared by Novogradac & Company LLP, a third party consultant who issued their determination of current and future market conditions. The study demonstrates the continued market demand for the Project and supports the financial assumptions included in the Project pro forma.

The extent of economic and social distress in the municipality and the area to be affected by the redevelopment project. The extent to which the redevelopment project will advance State, regional and local development and planning strategies, promote job creation and economic development and have a relationship to other major projects undertaken within the municipality.

The Project is located in the City of Trenton, Mercer County. For many decades, Trenton has combated a negative perception stemming from crime and safety statistics, which has caused a "cycle of disinvestment". The city has struggled economically and socially due to a declining employment base, lack of outside investment and poor schools. This development will help provide a significant economic investment and revitalization into a much needed area.

North 25 is ideally located in a residential area approximately five blocks from the Trenton Train Station. Improvements to the property would have a dramatic positive impact on the surrounding area. Minor enhancements of the current community service facility center will further support the low and moderate income senior residents with the most pressing needs. The community center will house North 25's existing social service programs which includes a variety of support services. The community center will also allow the housing project to serve as a centerpiece for the tenants, improving the overall development of the project.

The Applicant received a PILOT from the city of Trenton for a payment in lieu of taxes equal to an annual service charge of 7% of the actual taxes for the first fifteen years as their support to the project. The City has determined that the project will result in an improvement to the city and the improvements to the project will provide revitalization to a much needed area in addition to attracting additional senior residents to live in this upcoming community. North 25 Senior Development fills the need for affordable housing in the City of Trenton.

Recommendation

Authority staff has reviewed the application for North 25 Urban Renewal Preservation, LP and finds that it is consistent with eligibility requirements of the Act. It is recommended that the Members approve and authorize the Authority to issue a commitment letter to the Applicant.

Issuance of the RES ERG tax credits are contingent upon the Applicant meeting the following conditions:

1. Financing commitments for all funding sources for the Project consistent with the information provided by the Applicant to the Authority for the RES ERG; and
2. Evidence of site control and site plan approval for the Project; and
3. Copies of all required State and federal government permits for the Project and copies of all local planning and zoning board approvals that are required for the Project.
4. Evidence that the Project complies with N.J.A.C. 19:31-4.3(a)(3).

Tax Credits shall be issued upon:


1. Completion of construction and issuance of a Certificate of Occupancy (no later than July 28, 2018; and
2. Submission of a detailed list of all eligible costs, which costs shall be certified by a CPA and satisfactory to the NJEDA; and

It is recommended that the members authorize the CEO of the EDA to execute any assignment agreements necessary to effectuate this transaction

The New Jersey Economic Opportunity Act of 2013 provides a total of \$600 million in tax credits to be utilized towards eligible residential based projects. This allocation is further separated into five additional allocations to assist projects meeting certain geographic and/or economic criteria. This project being located in Trenton, New Jersey qualifies to be funded under the allocation for projects located in a Garden State Growth Zone. The initial total of this allocation was \$250 million. The approval of this project leaves \$57.2 million tax credits remaining.

Total Eligible Project Costs: \$22,052,435.

Eligible Tax Credits and Recommended Award: 40% of actual eligible costs, not to exceed \$8,820,974 to be paid over a maximum period of 10 years.



Timothy Lizura

Prepared by: Matthew Boyle



MEMORANDUM

To: Members of the Authority

From: Timothy Lizura
President and Chief Operating Officer

Date: June 9, 2015

RE: **Prospect Park Apartments Urban Renewal, LLC**
Residential Economic Redevelopment and Growth Grant Program ("RES ERG")
P #40552

Request

As created by statute, the Economic Redevelopment and Growth (ERG) Program offers state incentive grants to finance development projects that demonstrate a financing gap. Applications to the ERG Program are evaluated to determine eligibility in accordance with P.L. 2013, c. 161 and as amended through the "Economic Opportunity Act of 2014, Part 3," P.L. 2014, c. 63, based on representations made by applicants to the Authority. Per N.J.S.A. 52 :27D-489a et seq. / N.J.A.C. 19:31-4 and the program's rules, developers or non-profit organizations on behalf of a qualified developer, must have a redevelopment project located in a qualifying area, demonstrate that the project has a financing gap, meet minimum environmental standards, meet a 20% equity requirement, and, except with regards to a qualified residential project, yield a net positive benefit to the state. With the exception of Residential ERG projects, grants are made annually based on the incremental eligible taxes actually generated as a result of the project.

The Members are asked to approve the application of Prospect Park Apartments Urban Renewal, LLC (the "Applicant") for a Project located in East Orange, Essex County (the "Project"), for the issuance of tax credits pursuant to the RES ERG program.

The total costs of the Project are estimated to be \$31,366,467 and of this amount \$26,590,182 are eligible costs under the RES ERG program. The recommendation is to give up to 30% of actual eligible costs, not to exceed \$7,977,055. A residential project is eligible to receive a RES ERG tax credit of up to 20% of the total eligible project costs. Prospect Park Apartments Urban Renewal, LLC is also eligible for a bonus of an additional 10% (for a total of 30%) because the Applicant has demonstrated they will reserve 40% of the residential units for moderate income housing. The Project meets EDA's requirements for a RES ERG redevelopment project involving the rehabilitation of an existing building.

Project Description

Prospect Park Apartments is an existing senior Section 8 property located at 545 Park Avenue in the City of East Orange. The building is a masonry and brick ten story building consisting of one hundred and thirty units. It includes forty-eight efficiency units, seventy-five one-bedrooms, and seven two-bedroom units. The building has a front entry from a street level plaza and ramped side entry from the fenced parking lot – both access a central, supervised lobby. Two elevators off the lobby provide access to the nine residential stories. The ground floor houses two community rooms, management offices, laundry facilities, mail vestibule and utility rooms. There is currently a project based Section 8 Housing Assistance Payment (HAP) contract on the property which expires September 7, 2018.

The scope of work will entail improvements to kitchens and bathrooms including new flooring, appliances, fixtures, painting and new flooring for the hallways, new windows, renovations to the roof and all common areas. Exterior work will include improvements to the parking lot and walkways, building entry and exterior seating. The fire alarm system will also be replaced and a camera system installed.

The current owners, HRC Investment Corp., constructed the property in 1977. The purchase price of the real estate is currently under contract with the Applicant for \$12.9 million. Per the appraisal report prepared by CBRE dated March 31, 2015, the “as is” value of the property is \$14 million. In accordance with EDA’s proposed rules for the RES ERG Program EDA will recognize the lower of the purchase price of the real estate or appraised value.

The property is located within a Smart Growth Area. This Project will comply with the New Jersey Housing and Mortgage Finance Agency’s (“NJHMFA”) Energy Star Equivalency Program. An estimated completion date for the rehabilitation of the project complies with the RES ERG deadline of July 28, 2018.

Although applicants for the RES ERG program are not required to maintain certain employment levels, it is estimated that this Project, per the Applicant, will create approximately 55 temporary construction jobs during rehabilitation and retain three full time positions at the project site as a result of the ERG subsidy.

Project Ownership

The Applicant is a single purpose entity that will be 99.99% owned by an Investor Member LLC to be created through RBC Capital Markets and 0.01% owned by Prospect Park Apartments CRG, LLC, a single purpose entity. Moshe Eichler and Sam Horowitz are both 50% partners in Prospect Park Apartments CRG, LLC. Capital Realty Group, Inc. is the developer of the project and is owned by Moshe Eichler and Sam Horowitz. NJEDA received a certification from the highest ranking officer of the General Partner, Prospect Park Apartments CRG, LLC, as to the accuracy of the information submitted for the project.

Capital Realty Group, Inc. has been involved in the acquisition, redevelopment and operation of over 5,000 affordable housing units in 12 states. Capital Realty Group has extensive experience managing affordable rental units in New Jersey however this project will be the first project in which the company will be acting as the developer in New Jersey.

Project Uses

The Applicant proposes the following uses for the Project:

<i>Uses</i>	<i>Total Project Costs</i>	<i>RES ERG Eligible Amount</i>
Acquisition of Land and Buildings	\$ 12,985,715	12,985,715
Construction & Site Improvements	9,111,158	9,111,158
Professional Services	1,005,980	1,005,980
Financing & Other Costs	4,059,992	2,365,707
Contingency	1,121,622	1,121,622
Development Fee	3,082,000	
TOTAL USES	\$ 31,366,467	\$ 26,590,182

RES ERG eligible project costs exclude ineligible costs aggregating \$4,776,285, which include the developer fee of \$3,082,000 and Reserve Escrows of \$1,694,285.

<i>Sources of Financing</i>	<i>Amount</i>
Senior Debt	\$ 14,100,000
ERG Monetization	5,982,791
Equity	
LIHTC	9,793,347
Deferred Developer Fee	1,490,329
Total	\$ 31,366,467

The Applicant received a commitment for conduit construction and permanent financing at NJHMFA's May 2015 board meeting. The permanent debt financing will be structured as a public offering in HUD's 223(f) program. The permanent debt will have a 35 year amortization, with a 35 year loan term at a fixed interest rate of 4.51%. As part of its approval, NJHMFA reviews and approves all components of the financing in addition to the development fee.

As part of its permanent financing structure the Applicant received a commitment letter from the tax credit syndicator, RBC, who will be providing the Low Income Housing Tax Credit equity in the amount of \$9.8 million and RES ERG Tax credit equity in the amount of \$5.98 million.

Development Fee

The amount of developer fee allowed for eligible rehabilitation or new construction costs will be limited to 15% of total development costs excluding land, pre-operational expenses, and escrows and reserves pertaining to permanent takeout financing. The determination of total development fee is based on all remaining hard and soft costs, in addition to applicable financing fees. Developer fee at project construction completion or stabilization shall not exceed 8% (out of the 15% total) with the balance being deferred and taken through projected cash flow. This is consistent with NJHMFA's approach.

The Applicant has demonstrated to both NJHMFA and EDA that the project will not generate sufficient cash flow to return the entire developer fee within five years of project stabilization. The maximum developer fee of 15% for this project is not expected to be achieved until year 7.

RES ERG projects are required to have a minimum of 20% equity in the project based on the total projects costs. The equity sources of capital in Prospect Park Apartments Urban Renewal, LLC are deferred developer fee of \$1.49 million and LIHTC equity syndicated in the amount of \$9.79 million which collectively is 36% of total project costs.

Other Statutory Criteria

In order to be eligible for the program, the Authority is required to consider the following items:

The economic feasibility and the need of the redevelopment incentive grant agreement to the viability of the redevelopment project.

The Project is located in the City of East Orange, NJ an urban aid municipality. The City has struggled economically and socially. The unemployment rate for East Orange as of February 2015 was 9.4% compared to 7.0% for the state of New Jersey. The City is mainly comprised of residential units with some industrial projects. Approximately 73% of the population rents their residence most of which are affordable.

The Project appears to be economically feasible based on the track record of the developer and their management team as well as the funding sources and subsidies that have been made available to this project. However, without the State incentive, the Applicant represents that the Project is not feasible due to the initial funding gap.

The Authority is in receipt of a Market Feasibility Analysis dated March 31, 2015 on the Project prepared by CBRE, a third party consultant who issued their determination of current and future market conditions. The study demonstrates the continued market demand for the Project and supports the financial assumptions included in the Project pro forma.

The extent of economic and social distress in the municipality and the area to be affected by the redevelopment project. The extent to which the redevelopment project will advance State, regional and local development and planning strategies, promote job creation and economic development and have a relationship to other major projects undertaken within the municipality.

The subject property is located in East Orange, Essex County. The population of the City has remained stable since 2010 when it was 64,270 and projections for annual growth of .20% through 2018 when it is estimated to be 64,915. The majority of the housing units were renter occupied with 19.8% of the population living below the poverty line in 2012. There are multiple sections of the City that are designated as Urban Enterprise zones. As of 2013 the median household income of this population was \$36,068 well below the state of New Jersey's median household income of \$67,458. Additionally, East Orange is ranked # 560 in the MRI index, is a Distressed Community and is designated as an Urban Aid Municipality.

The project will support the State of New Jersey's Transit Village Initiative as East Orange was designated a transit village in 2012. Prospect Park Apartments is well located within East Orange's densely populated and developed residential neighborhood. The neighborhood has a number of desirable characteristics including convenient access to mass transportation, a number of highways, and its proximity to New York City. The rehabilitation of this aging affordable rental

housing project will improve the social distress of the community and retain affordable housing units for the city of East Orange.

Recommendation

Authority staff has reviewed the application for Prospect Park Apartments Urban Renewal, LLC and finds that it is consistent with eligibility requirements of the Act. It is recommended that the Members approve and authorize the Authority to issue an approval letter to the Applicant.

Issuance of the RES ERG tax credits are contingent upon the Applicant meeting the following conditions:

1. Financing commitments for all funding sources for the Project consistent with the information provided by the Applicant to the Authority for the RES ERG; and
2. Evidence of site control and site plan approval for the Project; and
3. Copies of all required State and federal government permits for the Project and copies of all local planning and zoning board approvals that are required for the Project.
4. Evidence that the Project complies with N.J.A.C. 19:31-4.3(a) (3).

Tax Credits shall be issued upon:

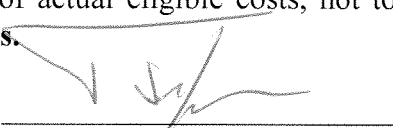
1. Completion of construction and issuance of a Certificate of Occupancy (no later than July 28, 2018; and
2. Submission of a detailed list of all eligible costs, which costs shall be certified by a CPA and satisfactory to the NJEDA; and

It is recommended that the members authorize the CEO of the EDA to execute any assignment agreements necessary to effectuate this transaction

The New Jersey Economic Opportunity Act of 2013 provides a total of \$600 million in tax credits to be utilized towards eligible residential based projects. This allocation is further separated into five additional allocations to assist projects meeting certain geographic and/or economic criteria. This project being located in East Orange, Essex County, qualifies to be funded under the allocation for projects located in an Urban Transit Hub. The initial total of this allocation was \$250 million. The balance after this board meeting dated June 9, 2015 leaves \$57.2 million tax credits remaining.

Total Eligible Project Costs: \$26,590,182.

Eligible Tax Credits and Recommended Award: 30% of actual eligible costs, not to exceed \$7,977,055 to be paid over a maximum period of 10 years.



Timothy Lizura

Prepared by: Matthew Boyle

GROW NEW JERSEY ASSISTANCE PROGRAM (GROW NJ)

The following summary is provided for information only. Full eligibility and review criteria can be found in the program's rules.

GROW NEW JERSEY ASSISTANCE PROGRAM (GROW NJ)

Created by law in 2012, and substantially revised through P.L. 2013, c. 161, the intent of this program is to provide tax credits to eligible businesses which make, acquire or lease a capital investment equal to or greater than certain minimum capital investment amounts at a qualified business facility at which it will employ certain numbers of employees in retained and/or new full-time jobs.

Per N.J.S.A. 34:1B-242 et seq. / N.J.A.C. 19:31-18 and the program's rules, the applicant must:

- Make, acquire, or lease a capital investment equal to, or greater than, the minimum capital investment, i.e.: Industrial/Rehabilitation Projects-\$20 sq. ft.; Industrial/New Construction Projects-\$60 sq. ft.; Office/Rehabilitation Projects-\$40 sq. ft.; and Office/New Construction-\$120 sq. ft.
Minimum capital investment amounts lowered to 2/3 in GSGZs and in eight southernmost counties
- Retain full-time jobs and/or create new full-time jobs in an amount equal to or greater than, the applicable minimum requirements, as follows: Tech start ups and manufacturing businesses - 10 new/25 retained FT jobs; Other targeted industries - 25 new/35 retained FT jobs; All other businesses/industries - 35 new/50 retained FT jobs.
Minimum employment numbers lowered to 3/4 in GSGZs and in eight southernmost counties
- Demonstrate that: the qualified business facility is constructed to certain minimum environmental / sustainability standards; the proposed capital investment and resultant retention and creation of eligible positions will yield a net positive benefit equaling at least 110% of requested tax credit allocation amount prior to taking into account the value of requested tax credit, and shall be based on benefits generated during the first 20 years following project completion (30 years for mega project or project in GSGZ and, for GSGZ-Camden, 35 years and equal to 100% of requested allocation); and, the award of tax credits will be a material factor in the business's decision to create or retain the minimum number of full-time jobs (if the site was acquired within 24 months prior to project application, the business shall provide evidence relating to viable alternatives to site and ability to dispose of or carry the costs of the site, if the business moves to the alternate site).

Staff Review:

- A comprehensive net benefit analysis is conducted to ensure the project has a positive net benefit to the State of at least 110%. The economic impact model used by the EDA includes multipliers from the RIMS II data base, published by the US Department of Commerce, along with internal econometric analysis and modeling to assess economic outputs, impacts and likely jobs creation.
- For material factor, staff reviews cost benefit analyses provided by the company regarding other out-of-state sites under consideration and cost of rent, property taxes, and utility costs; and, also investigates any existing labor contracts or real estate ownership that would render a re-location out of New Jersey impractical or cost prohibitive.
- For intra-State job transfers, EDA Board shall make a separate determination to verify and confirm that the jobs are at risk of leaving the state, the date(s) at which the EDA expects that those jobs would actually leave, or with respect to projects in a GSGZ-Camden, that the provision of tax credits under the program is a material factor in the businesses decision to make a capital investment and locate there, as attested to in a CEO certification.
- If the business reduces the total number of its full-time employees in the State by more than 20% from the tax period prior to approval, then the business shall forfeit its credit for that tax period and going forward until such time as its full-time employment in the State has increased to the 80% level.

Amount of award based upon:

- Base, gross and maximum amounts of tax credits for each new or retained full-time job, follows:

Project Type	Base Amount <i>Per Job/Per Year</i>	Gross Amount <i>Per Job/Per Year</i>	Maximum Amount <i>To be Applied Annually</i>
Mega Project	\$5,000	\$15,000	\$30 million
GSGZ Project	\$5,000	\$15,000	\$30 million/\$35 million-Camden
UTHTC Municipality	\$5,000	\$12,000	\$10 million
Distressed Municipality	\$4,000	\$11,000	\$8 million
Priority Area	\$3,000	\$10,500	\$4 million (<i>Not more than 90% of withholdings</i>)
Other Eligible Area	\$500	\$6,000	\$2.5 million (<i>Not more than 90% of withholdings</i>)
Disaster Recovery Project	\$2,000	\$2,000	

- Bonus – The amount of tax credit shall be increased if the qualified business facility meets any of the following priority criteria or other additional or replacement criteria determined by EDA from time to time in response to evolving economic or market conditions:

Bonus Type	Bonus Amount
Deep poverty pocket or Choice Neighborhoods Transportation Plan area	\$1,500
Qualified incubator facility	\$500
Mixed-use development with sufficient moderate income housing on site to accommodate 20% of full-time employees	\$500
Transit oriented development	\$2,000
Excess capital investment in industrial site for industrial use (<i>excludes mega projects</i>)	\$3,000 maximum
Excess capital investment in industrial site for industrial use (<i>mega projects or GSGZ projects</i>)	\$5,000 maximum
Average salary in excess of county's existing average or in excess of average for GSGZ	\$1,500 maximum
Large numbers of new and retained full-time jobs	
251 to 400	\$500
401 to 600	\$750
601 to 800	\$1,000
801 to 1,000	\$1,250
1,001+	\$1,500
Business in a targeted industry	\$500
Exceeds LEED "Silver" or completes substantial environmental remediation	\$250
Located in municipality in eight southernmost counties with a MRI Index greater than 465	\$1,000
Located within a half-mile of any new light rail station	\$1,000
Projects generating solar energy for onsite use	\$250

- Final Total Tax Credit Amount – Except for in GSGZ-Camden, the final total amount of tax credit, following the determination by EDA of the gross amount of tax credits, shall equal to 100% of the gross amount of tax credits for each new full-time job; and 50% for each retained full-time job.
- For tax credits in excess of \$40 million, the amount available to be applied by the business annually shall be the lesser of the permitted statutory maximum amount or an amount determined by EDA necessary to complete the project, determined through staff analysis of all locations under consideration and all lease agreements, ownership documents, or substantially similar documentation for the business's current in-State locations and potential out-of State location alternatives.
- Limits on Annual Tax Credits – The amount of tax credits available to be applied by the business annually shall not exceed certain amounts: GSGZ/Camden-\$35,000,000; Mega Project/Growth Zone-\$30,000,000; Urban Transit Hub - \$10,000,000; Distressed Municipality - \$8,000,000; Priority Areas - \$4,000,000 (not more than 90% of withholdings); and Other Eligible Areas - \$2,500,000 (not more than 90% of withholdings).

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY – GROW NEW JERSEY ASSISTANCE PROGRAM

As created by statute, the Grow New Jersey Assistance (Grow NJ) Program is available to businesses creating or retaining jobs in New Jersey and making a qualified capital investment at a qualified business facility in a qualified incentive area. Applications to the Grow NJ Program are evaluated to determine eligibility in accordance with P.L. 2013, c. 161 and as amended through the “Economic Opportunity Act of 2014, Part 3,” P.L. 2014, c. 63, based on representations made by applicants to the Authority. Per N.J.S.A. 34:1B-242 et seq./N.J.A.C. 19:31-1 and the program’s rules, applicants must employ a certain number of personnel in retained and/or new full-time jobs at a qualified business facility and make, acquire or lease a capital investment equal to or greater than defined thresholds in order to be eligible for tax credits. In addition to satisfying these statutorily-established job and capital investment requirements, applications undergo a material factor review to verify that the tax credits are material to the project advancing in New Jersey. Applications are also subject to a net benefit analysis to verify that the anticipated revenue resulting from the proposed project will be greater than the incentive amount. Credits are only certified for use annually and proportionally based on actual job performance during that year and an applicant is subject to forfeiture and recapture in event of default.

APPLICANT: Adare Pharmaceuticals, Inc. P41048

PROJECT LOCATION: 1200 Lenox Drive Lawrence Township Mercer County

GOVERNOR’S INITIATIVES:

☐ NJ Urban Fund ☒ Edison Innovation Fund ☐ Core ☐ Clean Energy

APPLICANT BACKGROUND:

Adare Pharmaceuticals, Inc. (“Adare”) is a start-up pharmaceutical technology company that formulates, develops and manufactures pharmaceutical products (for its own sale and on behalf of partners on a contract manufacturing basis). Adare came into its present form through a series of mergers and acquisitions of several pharmaceutical companies beginning in late 2010. The latest transaction was completed in April 2015, via an infusion of cash from TPG Capital (the funding entity) and the name of the company was changed to “Adare Pharmaceuticals, Inc.”. The applicant has demonstrated the financial ability to undertake the project through the support of its parent company.

MATERIAL FACTOR/NET BENEFIT:

The proposed project is an approximately 11,599 square foot existing vacant premises in Lawrence Township. The premises is a portion of an existing approximately 79,056 square foot multi-tenant building and would be leased from the landlord. The company is in the process of negotiating a lease. The proposed facility would be used to provide office space for general company administration. The proposed facility would be renovated as necessary to meet the company's business needs, with additional build-out also likely to accommodate future headcount growth. The alternate location is a 12,000 square foot facility in Yardley, PA.

The location analysis submitted to the Authority shows New Jersey to be the more expensive option and, as a result, the management of Adare Pharmaceuticals, Inc. has indicated that the grant of tax credits is a material factor in the company’s location decision. The Authority is in receipt of an executed CEO certification by John Fraher, the CEO of Adare Pharmaceuticals, Inc., that states that the application has been reviewed and the information submitted and representations contained therein are accurate and that, but for the Grow New Jersey award, the creation and/or retention of jobs would not occur. It is estimated that the project would have a net benefit to the State of \$17.0 million over the 20 year period required by the Statute.

ELIGIBILITY AND GRANT CALCULATION:

Per the Grow New Jersey statute, N.J.S.A. 34:1B-242 et seq. and the program’s rules, N.J.A.C. 19:31-18, the applicant must:

- Make, acquire, or lease a capital investment equal to, or greater than, the minimum capital investment, as follows:

<u>Minimum Capital Investment Requirements</u>	<u>(\$/Square Foot of Gross Leasable Area)</u>
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Industrial/Warehouse/Logistics/R&D - Rehabilitation Projects \$ 20

Industrial/Warehouse/Logistics/R&D - New Construction Projects \$ 60

Non-Industrial/Warehouse/Logistics/R&D – Rehabilitation Projects \$ 40

Non-Industrial/Warehouse/Logistics/R&D – New Construction Projects \$120

Minimum capital investment amounts are reduced by 1/3 in GSGZs and in eight South Jersey counties: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean and Salem

- Retain full-time jobs **AND/OR** create new full-time jobs in an amount equal to or greater than the applicable minimum, as follows:

<u>Minimum Full-Time Employment Requirements</u>	<u>(New / Retained Full-time Jobs)</u>
--	--

Tech start ups and manufacturing businesses **10 / 25**

Other targeted industries 25 / 35

All other businesses/industries 35 / 50

Minimum employment numbers are reduced by 1/4 in GSGZs and in eight South Jersey counties: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean and Salem

As Non-Industrial/Warehouse/Logistics/R&D – Rehabilitation Project, for a tech start up business, in Mercer County, this project has been deemed eligible for a Grow New Jersey award based upon these criteria, outlined in the table below:

Eligibility	Minimum Requirement	Proposed by Applicant
Capital Investment	\$463,960	\$1,120,540
New Jobs	10	40
Retained Jobs	25	0

The Grow New Jersey Statute and the program's rules also establish criteria for the Grant Calculation for **New Full-Time Jobs**. This project has been deemed eligible for a Base Award and Increases based on the following:

Base Grant	Requirement	Proposed by Applicant
Priority Area	Base award of \$3,000 per year for projects located in a designated Priority Area	Lawrence Township is a designated Priority Area
Increase(s) Criteria		
Jobs with Salary in Excess of County/GSGZ Average	An increase of \$250 per job for each 35% the applicant's median salary exceeds the median salary of the County, or the Garden State Growth Zone, in which the project is located with a maximum	The proposed median salary of \$155,000 exceeds the Mercer median salary by 155.9% resulting in an increase of \$1,250 per year.

	increase of \$1,500	
Targeted Industry	An increase of \$500 per job for a business in a Targeted Industry of Transportation, Manufacturing, Defense, Energy, Logistics, Life Sciences, Technology, Health, or Finance excluding a primarily warehouse, distribution or fulfillment center business	The applicant is a Life Sciences business.

The Grow New Jersey Statute and the program's rules establish a Grant Calculation for **Retained Full-Time Jobs**. The Grant Calculation for Retained Full-Time Jobs for this project will be based upon the following:

PROJECT TYPE	GRANT CALCULATION
Project located in a Garden State Growth Zone	The Retained Full-Time Jobs will receive the same Grant Calculation as New Full-Time Jobs as shown above subject to the same per employee limits.
A Mega Project which is the U.S. headquarters of an automobile manufacturer located in a priority area	The Retained Full-Time Jobs will receive the same Grant Calculation as New Full-Time Jobs as shown above subject to the same per employee limits.
The Qualified Business Facility is replacing a facility that has been wholly or substantially damaged as a result of a federally declared disaster	The Retained Full-Time Jobs will receive the same Grant Calculation as New Full-Time Jobs as shown above subject to the same per employee limits.
All other projects	<p>The Retained Full-Time Jobs will receive the lesser of:</p> <ul style="list-style-type: none"> - ½ of the Grant Calculation for New Full-Time Jobs ($1/2 * \\$4,750 = \\$2,375$) or - The estimated eligible Capital Investment divided by 10 divided by the total New and Retained Full-Time Jobs ($\\$1,120,540 / 10 / (40 + 0) = \\$2,801$) <p>In the event that upon completion a project has a lower actual Grant Calculation for New Full-Time Jobs or a lower Capital Investment than was estimated herein, the above calculations will be re-run and the applicant will receive the lesser of the two amounts.</p>

Grant Calculation**BASE GRANT PER EMPLOYEE:**

Priority Area \$3,000

INCREASES PER EMPLOYEE:

Jobs with Salary in Excess of County Average: \$1,250

Targeted Industry (Life Sciences): \$ 500

INCREASE PER EMPLOYEE: \$1,750

PER EMPLOYEE LIMIT:

Priority Area \$10,500

LESSER OF BASE + INCREASES OR PER EMPLOYEE LIMIT: \$4,750

AWARD:

New Jobs: 40 Jobs X \$4,750 X 100% = \$190,000

Retained Jobs: 0 Jobs X \$4,750 X 50% = \$0,000

Total: \$190,000

ANNUAL LIMITS:

Priority Area (Est. 90% Withholding Limit) \$ 4,000,000/ (\$405,720)

TOTAL ANNUAL AWARD **\$190,000**

ESTIMATED ELIGIBLE CAPITAL INVESTMENT:	\$	1,120,540
NEW FULL-TIME JOBS:		40
RETAINED FULL-TIME JOBS:		0
GROSS BENEFIT TO THE STATE (OVER 20 YEARS, PRIOR TO AWARD):	\$	18,945,538
NET BENEFIT TO THE STATE (OVER 20 YEARS, NET OF AWARD):	\$	17,045,538
TOTAL AMOUNT OF AWARD: (CAPPED ANNUALLY AT 90% OF WITHHOLDINGS)	\$	1,900,000
ELIGIBILITY PERIOD:		10 years
MEDIAN WAGES:	\$	155,000
SIZE OF PROJECT LOCATION:		11,599 sq. ft.
NEW BUILDING OR EXISTING LOCATION?		Existing
INDUSTRIAL OR NON-INDUSTRIAL FACILITY?		Non-Industrial
CITY FROM WHICH JOBS WILL BE RELOCATED IN NEW JERSEY:		Bridgewater
STATEWIDE BASE EMPLOYMENT:		6
PROJECT IS: () Expansion (X) Relocation		
CONSTRUCTION: (X) Yes () No		

CONDITIONS OF APPROVAL:

1. Applicant has not entered into a lease, purchase contract, or otherwise committed to remain in New Jersey.
2. Applicant will make an eligible capital investment of no less than the Statutory minimum after board approval, but no later than 3 years from Board approval.
3. No employees that are subject to a BEIP, BRRAG, legacy Grow New Jersey, Urban Transit Hub or other NJEDA incentive program are eligible for calculating the benefit amount of the Grow New Jersey tax credit.
4. No capital investment that is subject to a BEIP, BRRAG, legacy Grow New Jersey, Urban Transit Hub or other NJEDA incentive program is eligible to be counted toward the capital investment requirement for Grow New Jersey.
5. Within six months following approval, the applicant will submit progress information indicating that the business has site plan approval, committed financing for, and site control of the qualified business facility.
6. The applicant will maintain the 6 existing positions for the duration of the Grow NJ award. The number of new positions that are part of this Grow NJ award will only be counted above and beyond the first 6 positions at the proposed project site.

APPROVAL REQUEST:

The Members of the Authority are asked to approve the proposed Grow New Jersey grant to encourage Adare Pharmaceuticals, Inc. to increase employment in New Jersey. The recommended grant is contingent upon receipt by the Authority of evidence that the company has met certain criteria to substantiate the recommended award. If the criteria met by the company differs from that shown herein, the award amount and the term will be lowered to reflect the award amount that corresponds to the actual criteria that have been met.

DEVELOPMENT OFFICER: Justin Kenyon**APPROVAL OFFICER:** Mark Chierici

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY – GROW NEW JERSEY ASSISTANCE PROGRAM**

As created by statute, the Grow New Jersey Assistance (Grow NJ) Program is available to businesses creating or retaining jobs in New Jersey and making a qualified capital investment at a qualified business facility in a qualified incentive area. Applications to the Grow NJ Program are evaluated to determine eligibility in accordance with P.L. 2013, c. 161 and as amended through the “Economic Opportunity Act of 2014, Part 3,” P.L. 2014, c. 63, based on representations made by applicants to the Authority. Per N.J.S.A. 34:1B-242 et seq./N.J.A.C. 19:31-1 and the program’s rules, applicants must employ a certain number of personnel in retained and/or new full-time jobs at a qualified business facility and make, acquire or lease a capital investment equal to or greater than defined thresholds in order to be eligible for tax credits. In addition to satisfying these statutorily-established job and capital investment requirements, applications undergo a material factor review to verify that the tax credits are material to the project advancing in New Jersey. Applications are also subject to a net benefit analysis to verify that the anticipated revenue resulting from the proposed project will be greater than the incentive amount. Credits are only certified for use annually and proportionally based on actual job performance during that year and an applicant is subject to forfeiture and recapture in event of default.

APPLICANT: American Water Works Company, Inc P40756
American Water Works Service Company, Inc.
American Water Enterprises, Inc.

PROJECT LOCATION: Campbell Gateway District
Block 1453, Lot 6 Camden City Camden County

GOVERNOR’S INITIATIVES:

(X) NJ Urban Fund () Edison Innovation Fund () Core () Clean Energy

APPLICANT BACKGROUND:

Established in 1881, American Water Works Company, Inc., a Delaware corporation, is a national water and wastewater utility company. American Water, a publicly traded U.S. water and wastewater utility company has approximately 6,400 employees company-wide, providing an estimated 15 million people with drinking water, wastewater and water-related services in over 40 states and parts of Canada.

American Water Works Service Company, Inc. and American Water Enterprises, Inc. are the non-regulated “market-based operations”, which include the management of water and wastewater systems for utilities around the country and other ancillary business. American Water Works Service Company, Inc. provides commercial and professional services to affiliated companies; including account, administration, communication, corporate secretarial, engineering, financial, human resources, information systems, operations rates and revenue, risk management and water quality. American Water Enterprises, Inc. manages American Water’s market-based business units, offering services that supplement its core water and wastewater, and operations and maintenance contract businesses. The services include managing municipal water and wastewater systems under contract, community onsite water systems, and service lien protection programs for homeowners and businesses and water and wastewater management for military bases. The applicant has demonstrated the financial ability to undertake the project.

New Jersey American Water Co., the New Jersey-based regulated water utility subsidiary of American Water Works Co and headquartered in NJ, is not included in this Grow application.

MATERIAL FACTOR/NET BENEFIT:

The proposed project is located in Camden, NJ, a city that ranked 566 out of 566 municipalities in the 2007 New Jersey Municipal Revitalization Index. In recognition of Camden's inability to attract investment, in the New Jersey Economic Opportunity Act, the Legislature declared that Camden and the other Garden State

Growth Zones presented significant challenges to development and created incentives unique to Camden and other similarly situated Garden State Growth Zones to overcome these barriers.

American Water Works Company, Inc. is planning to consolidate the corporate staff of American Water Works Service and American Water Enterprises currently located in five separate leased facilities in Mt. Laurel, Voorhees, Cherry Hill and Haddon Heights, NJ, where leases are expiring through 2020. Maintaining leases on multiple facilities is operationally and financially inefficient, whereas relocating into a newly designed and constructed consolidated headquarters will facilitate the company's continuing progress toward both financial and organizational efficiency objectives. The planned consolidation of company's headquarters and related staff operations and market-based business staff into a single new facility, will result in the relocation of 596 full-time employees, plus creation of an additional 100 new employees. The options are to relocate these operations to a newly constructed 250,000 sq. ft. facility in Camden, NJ or at the Navy Yard in Philadelphia, PA.

The management of American Water Works Company, Inc. has indicated that the grant of tax credits is a material factor in the company's decision whether or not to locate the project in Camden. The Authority is in receipt of an executed CEO certification by Susan N. Story, the CEO of American Water Works Company, Inc., which states that the Grow New Jersey award is a material factor in the company's decision to make the capital investment and locate the project in Camden. The CEO certification also states that the application has been reviewed and the information submitted and representations contained therein are accurate.

Staff reviewed the project and finds support for management's assertion that the award of tax credits is a material factor in the company's decision to locate in Camden. If American Water Works Co., Inc. chooses the Camden option, the company would establish a new corporate headquarters in Camden. The alternative location is to relocate the offices to Philadelphia, PA.

This project represents a significant positive step forward for Camden's redevelopment efforts, bringing a corporate headquarters for a major global company, as well as its training and engineering center to the city. It is estimated that the project would have a net benefit to the State of \$130 million over the 35 year period required by the Statute.

FINDING OF JOBS AT RISK:

The applicant has certified that the 596 New Jersey jobs listed in the application are at risk of being located outside the State on or before December 31, 2018, the approximate date of completion of a new facility. This certification has allowed staff to make a finding that the award of the Grow New Jersey tax credits is a material factor in the applicant's decision to make a capital investment and locate in Camden.

ELIGIBILITY AND GRANT CALCULATION:

Per the Grow New Jersey statute, N.J.S.A. 34:1B-242 et seq. and the program's rules, N.J.A.C. 19:31-18, the applicant must:

- Make, acquire, or lease a capital investment equal to, or greater than, the minimum capital investment, as follows:

<u>Minimum Capital Investment Requirements</u>	<u>(\$/Square Foot of Gross Leasable Area)</u>
Industrial/Warehouse/Logistics/R&D - Rehabilitation Projects	\$ 20
Industrial/Warehouse/Logistics/R&D - New Construction Projects	\$ 60
Non-Industrial/Warehouse/Logistics/R&D – Rehabilitation Projects	\$ 40
Non-Industrial/Warehouse/Logistics/R&D – New Construction Projects	\$120

*Minimum capital investment amounts are reduced by 1/3 in GSGZs and in eight South Jersey counties: Atlantic, Burlington, **Camden**, Cape May, Cumberland, Gloucester, Ocean and Salem*

- Retain full-time jobs **AND/OR** create new full-time jobs in an amount equal to or greater than the applicable minimum, as follows:

<u>Minimum Full-Time Employment Requirements</u>	<u>(New / Retained Full-time Jobs)</u>
Tech start ups and manufacturing businesses	10 / 25
Other targeted Industries	25 / 35
All other businesses/industries	35 / 50

*Minimum employment numbers are **reduced by 1/4 in GSGZs** and in eight South Jersey counties: Atlantic, Burlington, **Camden**, Cape May, Cumberland, Gloucester, Ocean and Salem*

As a Non-Industrial – New Construction Project for an other business in Camden, this project has been deemed eligible for a Grow New Jersey award based upon these criteria, outlined in the table below:

Eligibility	Minimum Requirement	Proposed by Applicant
Capital Investment	\$20,000,000	\$164,187,735
New Jobs	27	100
Retained Jobs	38	596

The Grow New Jersey Statute and the program's rules also establish criteria for the Grant Calculation. Projects located in Camden are eligible to receive per employee as a tax credit the total amount of capital investment for the project divided by the number of employees, subject to the following limits, provided that the project represents a net positive benefit to the State:

New or Retained Jobs	Capital Investment	Maximum Annual Tax Credit	Limit on Total Tax Credit
≥35	\$5,000,000	\$2,000,000	\$20,000,000
≥70	\$10,000,000	\$3,000,000	\$30,000,000
≥100	\$15,000,000	\$4,000,000	\$40,000,000
≥150	\$20,000,000	\$5,000,000	\$50,000,000
≥250	\$30,000,000	\$35,000,000	\$350,000,000

Provided the company complies with all other program requirements, a reduction in the number of new or retained full-time jobs indicated in the company's annual report below the number certified in the initial CPA certification shall proportionately reduce the amount of tax credits the company may apply against liability in the relevant tax period. Also, if the number of new and retained full-time jobs, as indicated by the company's annual report, is reduced below the required number in the table above, the tax credits that the business may take shall be subject to the annual limit corresponding to the new and retained full-time jobs.

ESTIMATED ELIGIBLE CAPITAL INVESTMENT:	\$ 164,187,735
NEW FULL-TIME JOBS:	100
RETAINED FULL-TIME JOBS:	596
MAXIMUM AWARD PER JOB NEW/RETAINED:	\$ 235,901

GROSS BENEFIT TO THE STATE (OVER 35 YEARS, PRIOR TO AWARD):	\$294,825,631
NET BENEFIT TO THE STATE (OVER 35 YEARS, NET OF AWARD):	\$130,637,896
TOTAL AMOUNT OF AWARD:	\$164,187,735

TERM:	10 years
MEDIAN WAGES:	\$ 94,347
SIZE OF PROJECT LOCATION:	250,000 sq. ft.

CITIES FROM WHICH JOBS WILL BE RELOCATED IN NEW JERSEY?

Cherry Hills/Haddon Heights/Mt. Laurel/Voorhees

STATEWIDE BASE EMPLOYMENT:	1,416
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PROJECT IS: (X) Expansion	(X) Relocation
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CONSTRUCTION: (X) Yes	() No
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CONDITIONS OF APPROVAL:

1. Applicant has not entered into a lease, purchase contract, or otherwise committed to remain in New Jersey.
2. Applicant will make an eligible capital investment of no less than the Statutory minimum after board approval, but no later than 3 years from Board approval.
3. No employees that are subject to a BEIP, BRRAG, legacy Grow New Jersey, Urban Transit Hub or other NJEDA incentive program are eligible for calculating the benefit amount of the Grow New Jersey tax credit.
4. No capital investment that is subject to a BEIP, BRRAG, legacy Grow New Jersey, Urban Transit Hub or other NJEDA incentive program is eligible to be counted toward the capital investment requirement for Grow New Jersey.
5. Within twelve months following approval, the applicant will submit progress information indicating that the business has site plan approval, committed financing for, and site control of the qualified business facility.

APPROVAL REQUEST:

The Members of the Authority are asked to: 1) concur with the finding by staff that the award of the Grow New Jersey tax credits is a material factor in the applicant's decision to make a capital investment and locate in Camden; 2) approve the proposed Grow New Jersey grant to encourage American Water Works Company, Inc. and subsidiaries to locate in Camden. The recommended grant is contingent upon receipt by the Authority of evidence that the company has met certain criteria to substantiate the recommended award. If the criteria met by the company differs from that shown herein, the award amount and the term will be lowered to reflect the award amount that corresponds to the actual criteria that have been met.

DEVELOPMENT OFFICER: J. Kenyon**APPROVAL OFFICER:** T. Wells

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY – GROW NEW JERSEY ASSISTANCE PROGRAM**

As created by statute, the Grow New Jersey Assistance (Grow NJ) Program is available to businesses creating or retaining jobs in New Jersey and making a qualified capital investment at a qualified business facility in a qualified incentive area. Applications to the Grow NJ Program are evaluated to determine eligibility in accordance with P.L. 2013, c. 161 and as amended through the “Economic Opportunity Act of 2014, Part 3,” P.L. 2014, c. 63, based on representations made by applicants to the Authority. Per N.J.S.A. 34:1B-242 et seq./N.J.A.C. 19:31-1 and the program’s rules, applicants must employ a certain number of personnel in retained and/or new full-time jobs at a qualified business facility and make, acquire or lease a capital investment equal to or greater than defined thresholds in order to be eligible for tax credits. In addition to satisfying these statutorily-established job and capital investment requirements, applications undergo a material factor review to verify that the tax credits are material to the project advancing in New Jersey. Applications are also subject to a net benefit analysis to verify that the anticipated revenue resulting from the proposed project will be greater than the incentive amount. Credits are only certified for use annually and proportionally based on actual job performance during that year and an applicant is subject to forfeiture and recapture in event of default.

APPLICANT: Cummins Power Systems, LLC P40463

PROJECT LOCATION: 435 Bergen Ave Kearny Township Hudson County

GOVERNOR’S INITIATIVES:

☒ (X) NJ Urban Fund ☐ () Edison Innovation Fund ☐ () Core ☐ () Clean Energy

APPLICANT BACKGROUND:

Cummins Power Systems, LLC is a wholly owned subsidiary of Cummins Inc. a corporation of complementary business units that design, manufacture, distribute and service engines and related technologies. Cummins Power operates thirteen branch locations to serve and support a diverse base of customers having over 620 employees. Its current operation in Newark, NJ includes regional service, repair, maintenance, sales, warehouse, distribution and a training center. The applicant has demonstrated the financial ability to undertake the project through the support of its parent company.

MATERIAL FACTOR/NET BENEFIT:

The applicant has submitted an economic analysis to the Authority demonstrating the cost differential between leasing a custom built facility in Kearny, NJ and moving its operations out of the State. If the applicant should move its operations out of the State, it would move approximately half of its operations to Bristol, PA and the other half to the Bronx, NY. Both locations under operation by Cummins Power are currently operating at about 50% capacity. It believes that the Pennsylvania location would effectively service the southern half of the State while the New York location would effectively service the northern half of the State. If it completes the project within the State, it would be the first fully certified CNG/LNG facility in the State and be able to support NJ Transit's fleet that is now converting to CNG/LNG. The company notes that without the grant, there is no economic justification to complete the project within the State.

The location analysis submitted to the Authority shows New Jersey to be the more expensive option and, as a result, the management of Cummins Power Systems, LLC has indicated that the grant of tax credits is a material factor in the company’s location decision. The Authority is in receipt of an executed CEO certification by Kelley Tate, the CEO of Cummins Power Systems, LLC, that states that the application has been reviewed and the information submitted and representations contained therein are accurate and that, but for the Grow New

Jersey award, the creation and/or retention of jobs would not occur. It is estimated that the project would have a net benefit to the State of \$39.7M over the 20 year period required by the Statute.

FINDING OF JOBS AT RISK:

The applicant has certified that the 72 New Jersey jobs listed in the application are at risk of being located outside the State on or before July 1, 2015, the date of its lease expiration. This certification coupled with the economic analysis of the potential locations submitted to the Authority has allowed staff to make a finding that the jobs listed in the application are at risk of being located outside of New Jersey.

ELIGIBILITY AND GRANT CALCULATION:

Per the Grow New Jersey statute, N.J.S.A. 34:1B-242 et seq. and the program's rules, N.J.A.C. 19:31-18, the applicant must:

- Make, acquire, or lease a capital investment equal to, or greater than, the minimum capital investment, as follows:

Minimum Capital Investment Requirements	(\$/Square Foot of Gross Leasable Area)
Industrial/Warehouse/Logistics/R&D - Rehabilitation Projects	\$ 20
Industrial/Warehouse/Logistics/R&D - New Construction Projects	\$ 60
Non-Industrial/Warehouse/Logistics/R&D – Rehabilitation Projects	\$ 40
Non-Industrial/Warehouse/Logistics/R&D – New Construction Projects	\$120

Minimum capital investment amounts are reduced by 1/3 in GSGZs and in eight South Jersey counties: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean and Salem

- Retain full-time jobs **AND/OR** create new full-time jobs in an amount equal to or greater than the applicable minimum, as follows:

Minimum Full-Time Employment Requirements	(New / Retained Full-time Jobs)
Tech start ups and manufacturing businesses	10 / 25
Other targeted industries	25 / 35
All other businesses/industries	35 / 50

Minimum employment numbers are reduced by 1/4 in GSGZs and in eight South Jersey counties: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean and Salem

As an Non-Industrial/Warehouse/Logistics/R&D – New Construction Project for an other business in Hudson County, this project has been deemed eligible for a Grow New Jersey award based upon these criteria, outlined in the table below:

Eligibility	Minimum Requirement	Proposed by Applicant
Capital Investment	\$7,419,000	\$17,893,638
New Jobs	35	35
Retained Jobs	50	72

The Grow New Jersey Statute and the program's rules also establish criteria for the Grant Calculation for **New Full-Time Jobs**. This project has been deemed eligible for a Base Award and Increases based on the following:

Base Grant	Requirement	Proposed by Applicant
Distressed Municipality	Base award of \$4,000 per year for projects located in a designated Distressed Municipality	Kearny Town is a designated Distressed Municipality
Increase(s) Criteria		
Jobs with Salary in Excess of County/GSGZ Average	An increase of \$250 per job for each 35% the applicant's median salary exceeds the median salary of the County, or the Garden State Growth Zone, in which the project is located with a maximum increase of \$1,500	The proposed median salary of \$77,200 exceeds the County median salary by 60% resulting in an increase of \$250 per year.
Exceeds LEEDs Silver or Substantial Env. Remed.	An increase of \$250 per job for a facility exceeding the Leadership in Energy and Environmental Design's "Silver" rating standards or for a project that completes substantial environmental remediation	The applicant proposes completing substantial environmental remediation totaling \$4,300,000.

The Grow New Jersey Statute and the program's rules establish a Grant Calculation for **Retained Full-Time Jobs**. The Grant Calculation for Retained Full-Time Jobs for this project will be based upon the following:

PROJECT TYPE	GRANT CALCULATION
Project located in a Garden State Growth Zone	The Retained Full-Time Jobs will receive the same Grant Calculation as New Full-Time Jobs as shown above subject to the same per employee limits.
A Mega Project which is the U.S. headquarters of an automobile manufacturer located in a priority area	The Retained Full-Time Jobs will receive the same Grant Calculation as New Full-Time Jobs as shown above subject to the same per employee limits.
The Qualified Business Facility is replacing a facility that has been wholly or substantially damaged as a result of a federally declared disaster	The Retained Full-Time Jobs will receive the same Grant Calculation as New Full-Time Jobs as shown above subject to the same per employee limits.
All other projects	<p>The Retained Full-Time Jobs will receive the lesser of:</p> <ul style="list-style-type: none"> - ½ of the Grant Calculation for New Full-Time Jobs ($1/2 * \\$4,500 = \\$2,250$) or - The estimated eligible Capital Investment divided by 10 divided by the total New and Retained Full-Time Jobs ($\\$17,893,638 / 10 / (35 + 72) = \\$16,723$) <p>In the event that upon completion a project has a lower actual Grant</p>

Calculation for New Full-Time Jobs or a lower Capital Investment than was estimated herein, the above calculations will be re-run and the applicant will receive the lesser of the two amounts.

Grant Calculation**BASE GRANT PER EMPLOYEE:**

Distressed Municipality \$ 4,000

INCREASES PER EMPLOYEE:

Jobs with Salary in Excess of County Average: \$ 250

Substantial Env. Remed.: \$ 250

INCREASE PER EMPLOYEE: \$ 500

PER EMPLOYEE LIMIT:

Distressed Municipality \$11,000

LESSER OF BASE + INCREASES OR PER EMPLOYEE LIMIT: \$ 4,500

AWARD:

New Jobs: 35 Jobs X \$4,500 X 100% = \$157,500

Retained Jobs: 72 Jobs X \$4,500 X 50% = \$162,000

Total: **\$319,500**

ANNUAL LIMITS:

Distressed Municipality \$ 8,000,000

TOTAL ANNUAL AWARD **\$319,500**

ESTIMATED ELIGIBLE CAPITAL INVESTMENT:	\$ 17,893,638
NEW FULL-TIME JOBS:	35
RETAINED FULL-TIME JOBS:	72

GROSS BENEFIT TO THE STATE (OVER 20 YEARS, PRIOR TO AWARD)	\$ 42,863,600
NET BENEFIT TO THE STATE (OVER 20 YEARS, NET OF AWARD):	\$ 39,668,600
TOTAL AMOUNT OF AWARD	\$ 3,195,000
ELIGIBILITY PERIOD:	10 years
MEDIAN WAGES:	\$ 77,200
SIZE OF PROJECT LOCATION:	61,825 sq. ft.
NEW BUILDING OR EXISTING LOCATION?	New
INDUSTRIAL OR NON-INDUSTRIAL FACILITY?	Non-Industrial
CITY FROM WHICH JOBS WILL BE RELOCATED IN NEW JERSEY:	Newark City

STATEWIDE BASE EMPLOYMENT:	104
PROJECT IS: (X) Expansion (X) Relocation	
CONSTRUCTION: (X) Yes () No	

CONDITIONS OF APPROVAL:

1. Applicant has not entered into a lease, purchase contract, or otherwise committed to remain in New Jersey.
2. Applicant will make an eligible capital investment of no less than the Statutory minimum after board approval, but no later than 3 years from Board approval.
3. No employees that are subject to a BEIP, BRRAG, legacy Grow New Jersey, Urban Transit Hub or other NJEDA incentive program are eligible for calculating the benefit amount of the Grow New Jersey tax credit.
4. No capital investment that is subject to a BEIP, BRRAG, legacy Grow New Jersey, Urban Transit Hub or other NJEDA incentive program is eligible to be counted toward the capital investment requirement for Grow New Jersey.
5. Within twelve months following approval, the applicant will submit progress information indicating that the business has site plan approval, committed financing for, and site control of the qualified business facility.

APPROVAL REQUEST:

The Members of the Authority are asked to: 1) concur with the finding by staff that the jobs in the application are at risk of being located outside New Jersey on or before July 1, 2015; 2) approve the proposed Grow New Jersey grant to encourage Cummins Power Systems, LLC to increase employment in New Jersey. The recommended grant is contingent upon receipt by the Authority of evidence that the company has met certain criteria to substantiate the recommended award. If the criteria met by the company differs from that shown herein, the award amount and the term will be lowered to reflect the award amount that corresponds to the actual criteria that have been met.

DEVELOPMENT OFFICER: P. Ceppi**APPROVAL OFFICER:** J. Horezga

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY – GROW NEW JERSEY ASSISTANCE PROGRAM**

As created by statute, the Grow New Jersey Assistance (Grow NJ) Program is available to businesses creating or retaining jobs in New Jersey and making a qualified capital investment at a qualified business facility in a qualified incentive area. Applications to the Grow NJ Program are evaluated to determine eligibility in accordance with P.L. 2013, c. 161 and as amended through the “Economic Opportunity Act of 2014, Part 3,” P.L. 2014, c. 63, based on representations made by applicants to the Authority. Per N.J.S.A. 34:1B-242 et seq./N.J.A.C. 19:31-1 and the program’s rules, applicants must employ a certain number of personnel in retained and/or new full-time jobs at a qualified business facility and make, acquire or lease a capital investment equal to or greater than defined thresholds in order to be eligible for tax credits. In addition to satisfying these statutorily-established job and capital investment requirements, applications undergo a material factor review to verify that the tax credits are material to the project advancing in New Jersey. Applications are also subject to a net benefit analysis to verify that the anticipated revenue resulting from the proposed project will be greater than the incentive amount. Credits are only certified for use annually and proportionally based on actual job performance during that year and an applicant is subject to forfeiture and recapture in event of default.

APPLICANT:	Frederick Goldman, Inc.	P41049
PROJECT LOCATION:	101 County Avenue	Secaucus Town Hudson County

GOVERNOR’S INITIATIVES:

☐ NJ Urban Fund ☐ Edison Innovation Fund ☒ Core ☐ Clean Energy

APPLICANT BACKGROUND:

Frederick Goldman, Inc., formed in 1948 by Frederick Goldman, now owned and operated by his sons, Jonathan and Richard Goldman, is a privately held jewelry manufacturer which focuses on bridal jewelry, and diamond and gemstone fashion jewelry for women. Most products are sold under the brands Goldman, Diana, ArtCarved, Keepsake, Triton, Vera Wang, and Scott Kay, as well as on a non-private label basis. The company’s distribution network includes independent jewelry stores, specialty chain stores, mass merchants, discount retailers and internet retailers. The applicant has demonstrated the financial ability to undertake the project.

MATERIAL FACTOR/NET BENEFIT:

The applicant has submitted an economic analysis detailing the cost differential between locating this project in Secaucus, NJ or West Nyack, NY. It would purchase the 59,500 SF NJ location, through an affiliate entity, which would then lease the site to the applicant. Locating in New Jersey, the applicant would incur upfront purchase and higher renovation costs, and an annual shuttle expense, as there is limited parking on-site. The 49,000 SF NY location would be leased from an unrelated entity, and require less upfront renovation. The applicant would relocate all 214 full-time positions currently at the Manhattan location to either site.

The location analysis submitted to the Authority shows New Jersey to be the more expensive option and, as a result, the management of Frederick Goldman, Inc. has indicated that the grant of tax credits is a material factor in the company’s location decision. The Authority is in receipt of an executed CEO certification by Jonathan Goldman, the CEO of Frederick Goldman, Inc., that states that the application has been reviewed and the information submitted and representations contained therein are accurate and that, but for the Grow New Jersey award, the creation and/or retention of jobs would not occur. It is estimated that the project would have a net benefit to the State of \$44.9 million over the 20 year period required by the Statute.

ELIGIBILITY AND GRANT CALCULATION:

Per the Grow New Jersey statute, N.J.S.A. 34:1B-242 et seq. and the program's rules, N.J.A.C. 19:31-18, the applicant must:

- Make, acquire, or lease a capital investment equal to, or greater than, the minimum capital investment, as follows:

Minimum Capital Investment Requirements	(\$/Square Foot of Gross Leasable Area)
Industrial/Warehouse/Logistics/R&D - Rehabilitation Projects	\$ 20
Industrial/Warehouse/Logistics/R&D - New Construction Projects	\$ 60
Non-Industrial/Warehouse/Logistics/R&D – Rehabilitation Projects	\$ 40
Non-Industrial/Warehouse/Logistics/R&D – New Construction Projects	\$120

Minimum capital investment amounts are reduced by 1/3 in GSGZs and in eight South Jersey counties: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean and Salem

- Retain full-time jobs **AND/OR** create new full-time jobs in an amount equal to or greater than the applicable minimum, as follows:

Minimum Full-Time Employment Requirements	(New / Retained Full-time Jobs)
Tech start ups and manufacturing businesses	10 / 25
Other targeted industries	25 / 35
All other businesses/industries	35 / 50

Minimum employment numbers are reduced by 1/4 in GSGZs and in eight South Jersey counties: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean and Salem

As an Industrial Rehabilitation Project, for a manufacturing business in Hudson County, this project has been deemed eligible for a Grow New Jersey award based upon these criteria, outlined in the table below:

Eligibility	Minimum Requirement	Proposed by Applicant
Capital Investment	\$1,190,000	\$5,388,000
New Jobs	10	214
Retained Jobs	25	0

The Grow New Jersey Statute and the program's rules also establish criteria for the Grant Calculation for **New Full-Time Jobs**. This project has been deemed eligible for a Base Award and Increases based on the following:

Base Grant	Requirement	Proposed by Applicant
Distressed Municipality	Base award of \$4,000 per year for projects located in a designated Distressed Municipality	Secaucus Town is a designated Distressed Municipality
Increase(s) Criteria		
Capital Investment in Excess of Minimum (non-Mega)	An increase of \$1,000 per job for each additional amount of capital investment in an industrial premises that exceeds the minimum amount	The proposed capital investment of \$5,388,000 is 352% above the minimum capital investment resulting in an increase of \$3,000 per year.

	required for eligibility by 20%, with a maximum increase of \$3,000	
Targeted Industry	An increase of \$500 per job for a business in a Targeted Industry of Transportation, Manufacturing, Defense, Energy, Logistics, Life Sciences, Technology, Health, or Finance excluding a primarily warehouse, distribution or fulfillment center business	The applicant is a Manufacturing business.

The Grow New Jersey Statute and the program's rules establish a Grant Calculation for **Retained Full-Time Jobs**. The Grant Calculation for Retained Full-Time Jobs for this project will be based upon the following:

PROJECT TYPE	GRANT CALCULATION
Project located in a Garden State Growth Zone	The Retained Full-Time Jobs will receive the same Grant Calculation as New Full-Time Jobs as shown above subject to the same per employee limits.
A Mega Project which is the U.S. headquarters of an automobile manufacturer located in a priority area	The Retained Full-Time Jobs will receive the same Grant Calculation as New Full-Time Jobs as shown above subject to the same per employee limits.
The Qualified Business Facility is replacing a facility that has been wholly or substantially damaged as a result of a federally declared disaster	The Retained Full-Time Jobs will receive the same Grant Calculation as New Full-Time Jobs as shown above subject to the same per employee limits.
All other projects	<p>The Retained Full-Time Jobs will receive the lesser of:</p> <ul style="list-style-type: none"> - $\frac{1}{2}$ of the Grant Calculation for New Full-Time Jobs ($\frac{1}{2} * \\$7,500 = \\$3,750$) or - The estimated eligible Capital Investment divided by 10 divided by the total New and Retained Full-Time Jobs ($\\$5,388,000 / 10 / (214 + 0) = \\$2,517$) <p>In the event that upon completion a project has a lower actual Grant Calculation for New Full-Time Jobs or a lower Capital Investment than was estimated herein, the above calculations will be re-run and the applicant will receive the lesser of the two amounts.</p>

Grant Calculation**BASE GRANT PER EMPLOYEE:**

Distressed Municipality \$ 4,000

INCREASES PER EMPLOYEE:

Capital Investment in Excess of Minimum (Non Mega): \$ 3,000
Targeted Industry (Manufacturing): \$ 500

INCREASE PER EMPLOYEE: \$ 3,500

PER EMPLOYEE LIMIT:

Distressed Municipality \$ 11,000

LESSER OF BASE + INCREASES OR PER EMPLOYEE LIMIT: \$ 7,500

AWARD:

New Jobs: 214 Jobs X \$7,500 X 100% = \$1,605,000
Retained Jobs: 0 Jobs X \$2,517 X 100% = \$ 0

Total: **\$1,605,000**

ANNUAL LIMITS:

Distressed Municipality \$ 8,000,000

TOTAL ANNUAL AWARD **\$1,605,000**

ESTIMATED ELIGIBLE CAPITAL INVESTMENT:	\$ 5,388,000
NEW FULL-TIME JOBS:	214
RETAINED FULL-TIME JOBS:	0

GROSS BENEFIT TO THE STATE (OVER 20 YEARS, PRIOR TO AWARD):	\$ 61,004,870
NET BENEFIT TO THE STATE (OVER 20 YEARS, NET OF AWARD):	\$ 44,954,870
TOTAL AMOUNT OF AWARD:	\$ 16,050,000
ELIGIBILITY PERIOD:	10 years
MEDIAN WAGES:	\$ 41,987
SIZE OF PROJECT LOCATION:	59,500 sq. ft.
NEW BUILDING OR EXISTING LOCATION?	Existing
INDUSTRIAL OR NON-INDUSTRIAL FACILITY?	Industrial
CITY FROM WHICH JOBS WILL BE RETAINED IN NEW JERSEY:	N/A
STATEWIDE BASE EMPLOYMENT:	19
PROJECT IS: (X) Expansion	() Relocation
CONSTRUCTION: (X) Yes	() No

CONDITIONS OF APPROVAL:

1. Applicant has not entered into a lease, purchase contract, or otherwise committed to remain in New Jersey.
2. Applicant will make an eligible capital investment of no less than the Statutory minimum after board approval, but no later than 3 years from Board approval.
3. No employees that are subject to a BEIP, BRRAG, legacy Grow New Jersey, Urban Transit Hub or other NJEDA incentive program are eligible for calculating the benefit amount of the Grow New Jersey tax credit.
4. No capital investment that is subject to a BEIP, BRRAG, legacy Grow New Jersey, Urban Transit Hub or other NJEDA incentive program is eligible to be counted toward the capital investment requirement for Grow New Jersey.
5. Within six months following approval, the applicant will submit progress information indicating that the business has site plan approval, committed financing for, and site control of the qualified business facility.
6. The applicant will maintain the 19 current positions it has within the State for the duration of the Grow NJ award. The number of new positions that are subject to this Grow NJ award will only be counted above and beyond the first 19 positions employed by the applicant at the project site.

APPROVAL REQUEST:

The Members of the Authority are asked to approve the proposed Grow New Jersey grant to encourage Frederick Goldman, Inc. to increase employment in New Jersey. The recommended grant is contingent upon receipt by the Authority of evidence that the company has met certain criteria to substantiate the recommended award. If the criteria met by the company differs from that shown herein, the award amount and the term will be lowered to reflect the award amount that corresponds to the actual criteria that have been met.

DEVELOPMENT OFFICER: M. Abraham**APPROVAL OFFICER:** D. Poane

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY – GROW NEW JERSEY ASSISTANCE PROGRAM**

As created by statute, the Grow New Jersey Assistance (Grow NJ) Program is available to businesses creating or retaining jobs in New Jersey and making a qualified capital investment at a qualified business facility in a qualified incentive area. Applications to the Grow NJ Program are evaluated to determine eligibility in accordance with P.L. 2013, c. 161 and as amended through the “Economic Opportunity Act of 2014, Part 3,” P.L. 2014, c. 63, based on representations made by applicants to the Authority. Per N.J.S.A. 34:1B-242 et seq./N.J.A.C. 19:31-1 and the program’s rules, applicants must employ a certain number of personnel in retained and/or new full-time jobs at a qualified business facility and make, acquire or lease a capital investment equal to or greater than defined thresholds in order to be eligible for tax credits. In addition to satisfying these statutorily-established job and capital investment requirements, applications undergo a material factor review to verify that the tax credits are material to the project advancing in New Jersey. Applications are also subject to a net benefit analysis to verify that the anticipated revenue resulting from the proposed project will be greater than the incentive amount. Credits are only certified for use annually and proportionally based on actual job performance during that year and an applicant is subject to forfeiture and recapture in event of default.

APPLICANT: SSB Manufacturing Company P41044

PROJECT LOCATION: 50 Bryla St. Carteret Borough Middlesex County

GOVERNOR’S INITIATIVES:

(X) NJ Urban Fund () Edison Innovation Fund () Core () Clean Energy

APPLICANT BACKGROUND:

SSB Manufacturing Company operates as a wholly owned manufacturing subsidiary of Serta Simmons Bedding LLC. Serta Simmons Bedding LLC manufactures and sells beds and mattresses across the globe. Its origins date back to 1931 when an assembly of independent mattress manufacturers joined forces under a single brand name. The applicant has demonstrated the financial ability to undertake the project through the support of its parent company.

MATERIAL FACTOR/NET BENEFIT:

The applicant submitted an economic analysis detailing the cost differential between locating this project in Carteret, New Jersey and Hazleton, Pennsylvania. The analysis examines the one-time upfront costs as well as the ongoing annual costs of locating the project in either state. Under the New Jersey scenario, the company would enter into a long term lease at a 460,000 sf. facility. It would create a new state of the art mattress manufacturing facility with accompanying showroom. Should the applicant choose the Pennsylvania option, it would upgrade its existing facility with new state of the art mattress manufacturing equipment and a new showroom. The company notes that without the incentive, there is no economic justification to move forward with the project in New Jersey.

The location analysis submitted to the Authority shows New Jersey to be the more expensive option and, as a result, the management of SSB Manufacturing Company has indicated that the grant of tax credits is a material factor in the company’s location decision. The Authority is in receipt of an executed CEO certification by Gary Fazio, the CEO of SSB Manufacturing Company, that states that the application has been reviewed and the information submitted and representations contained therein are accurate and that, but for the Grow New Jersey award, the creation and/or retention of jobs would not occur. It is estimated that the project would have a net benefit to the State of \$40.6M over the 20 year period required by the Statute.

ELIGIBILITY AND GRANT CALCULATION:

Per the Grow New Jersey statute, N.J.S.A. 34:1B-242 et seq. and the program's rules, N.J.A.C. 19:31-18, the applicant must:

- Make, acquire, or lease a capital investment equal to, or greater than, the minimum capital investment, as follows:

Minimum Capital Investment Requirements	(\$/Square Foot of Gross Leasable Area)
---	--

Industrial/Warehouse/Logistics/R&D - Rehabilitation Projects **\$ 20**

Industrial/Warehouse/Logistics/R&D - New Construction Projects \$ 60

Non-Industrial/Warehouse/Logistics/R&D – Rehabilitation Projects \$ 40

Non-Industrial/Warehouse/Logistics/R&D – New Construction Projects \$120

Minimum capital investment amounts are reduced by 1/3 in GSGZs and in eight South Jersey counties: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean and Salem

- Retain full-time jobs **AND/OR** create new full-time jobs in an amount equal to or greater than the applicable minimum, as follows:

Minimum Full-Time Employment Requirements	(New / Retained Full-time Jobs)
---	---------------------------------

Tech start ups and **manufacturing businesses** **10 / 25**

Other targeted industries 25 / 35

All other businesses/industries 35 / 50

Minimum employment numbers are reduced by 1/4 in GSGZs and in eight South Jersey counties: Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean and Salem

As an Industrial - Rehabilitation Project for a manufacturing business in Middlesex County, this project has been deemed eligible for a Grow New Jersey award based upon these criteria, outlined in the table below:

Eligibility	Minimum Requirement	Proposed by Applicant
Capital Investment	\$9,200,000	\$20,893,875
New Jobs	10	251
Retained Jobs	25	0

The Grow New Jersey Statute and the program's rules also establish criteria for the Grant Calculation for **New Full-Time Jobs**. This project has been deemed eligible for a Base Award and Increases based on the following:

Base Grant	Requirement	Proposed by Applicant
Mega Project	Base award of \$5,000 per year for projects designated as a Mega Project	A Qualified Business Facility located in an Distressed Municipality that qualifies as a Mega Project by virtue of being in a Port District for a business in the logistics, manufacturing , energy, defense, or maritime industry having either capital

		investment in excess of \$20,000,000 and more than 250 full-time employees created or retained or having more than 1,000 employees created or retained.
Increase(s) Criteria		
Large Number of New/Retained Full-Time Jobs	An increase of \$500 per job for 251-400 new or retained jobs, \$750 per job for 401-600 new or retained jobs, \$1,000 for 601-800 new or retained jobs, \$1,250 for 801-1,000 new or retained jobs and \$1,500 for more than 1,000 new or retained jobs	The applicant is proposing to create/retain 251 Full-Time Jobs at the project location resulting in an increase of \$500.
Targeted Industry	An increase of \$500 per job for a business in a Targeted Industry of Transportation, Manufacturing, Defense, Energy, Logistics, Life Sciences, Technology, Health, or Finance excluding a primarily warehouse, distribution or fulfillment center business	The applicant is a Manufacturing business.
Mega/GSGZ Ind. Project w/ Cap. Inv. In Excess of Min	An increase of \$1,000 per job for a Mega Project or a project located in a Garden State Growth Zone for each additional amount of capital investment in an industrial premises that exceeds the minimum amount required for eligibility by 20%, with a maximum increase of \$5,000	The proposed project is a Mega Project. The proposed capital investment of \$20,893,875 is 127% above the minimum capital investment resulting in an increase of \$5,000 per year.

The Grow New Jersey Statute and the program's rules establish a Grant Calculation for **Retained Full-Time Jobs**. The Grant Calculation for Retained Full-Time Jobs for this project will be based upon the following:

PROJECT TYPE	GRANT CALCULATION
Project located in a Garden State Growth Zone	The Retained Full-Time Jobs will receive the same Grant Calculation as New Full-Time Jobs as shown above subject to the same per employee limits.
A Mega Project which is the U.S. headquarters of an automobile manufacturer located in a priority area	The Retained Full-Time Jobs will receive the same Grant Calculation as New Full-Time Jobs as shown above subject to the same per employee limits.

The Qualified Business Facility is replacing a facility that has been wholly or substantially damaged as a result of a federally declared disaster	The Retained Full-Time Jobs will receive the same Grant Calculation as New Full-Time Jobs as shown above subject to the same per employee limits.
All other projects	<p>The Retained Full-Time Jobs will receive the lesser of:</p> <ul style="list-style-type: none"> - $\frac{1}{2}$ of the Grant Calculation for New Full-Time Jobs ($\frac{1}{2} * \\$11,000 = \\$5,500$) or - The estimated eligible Capital Investment divided by 10 divided by the total New and Retained Full-Time Jobs ($20,893,875 / 10 / (251 + 0) = \\$8,324$) <p>In the event that upon completion a project has a lower actual Grant Calculation for New Full-Time Jobs or a lower Capital Investment than was estimated herein, the above calculations will be re-run and the applicant will receive the lesser of the two amounts.</p>

Grant Calculation

BASE GRANT PER EMPLOYEE:

Mega Project \$5,000

INCREASES PER EMPLOYEE:

Large Number of New/Retained F/T Jobs:	\$ 500
Targeted Industry (Manufacturing):	\$ 500
Mega Ind. Project w/ Cap. Inv. In Excess of Min:	\$ 5,000

INCREASE PER EMPLOYEE: \$6,000

PER EMPLOYEE LIMIT:

Mega Project \$15,000

LESSER OF BASE + INCREASES OR PER EMPLOYEE LIMIT: \$11,000

AWARD:

New Jobs:	251 Jobs X \$11,000 X 100% =	\$2,761,000
Retained Jobs:	0 Jobs X \$11,000 X 50% =	<u>\$ 0</u>

Total: \$2,761,000

ANNUAL LIMITS:

Mega Project \$30,000,000

TOTAL ANNUAL AWARD **\$2,761,000**

ESTIMATED ELIGIBLE CAPITAL INVESTMENT:	\$ 20,893,875
NEW FULL-TIME JOBS:	251
RETAINED FULL-TIME JOBS:	0

GROSS BENEFIT TO THE STATE (OVER 20 YEARS, PRIOR TO AWARD):	\$ 68,210,957
NET BENEFIT TO THE STATE (OVER 20 YEARS, NET OF AWARD):	\$ 40,600,957
TOTAL AMOUNT OF AWARD:	\$ 27,610,000
ELIGIBILITY PERIOD:	10 years
MEDIAN WAGES:	\$ 31,878
SIZE OF PROJECT LOCATION:	460,000 sq. ft.
NEW BUILDING OR EXISTING LOCATION?	Existing
INDUSTRIAL OR NON-INDUSTRIAL FACILITY?	Industrial
CITY FROM WHICH JOBS WILL BE RELOCATED IN NEW JERSEY:	N/A
STATEWIDE BASE EMPLOYMENT:	0
PROJECT IS: (X) Expansion	() Relocation
CONSTRUCTION: (X) Yes	() No

CONDITIONS OF APPROVAL:

1. Applicant has not entered into a lease, purchase contract, or otherwise committed to remain in New Jersey.
2. Applicant will make an eligible capital investment of no less than the Statutory minimum after board approval, but no later than 3 years from Board approval.
3. No employees that are subject to a BEIP, BRRAG, legacy Grow New Jersey, Urban Transit Hub or other NJEDA incentive program are eligible for calculating the benefit amount of the Grow New Jersey tax credit.
4. No capital investment that is subject to a BEIP, BRRAG, legacy Grow New Jersey, Urban Transit Hub or other NJEDA incentive program is eligible to be counted toward the capital investment requirement for Grow New Jersey.
5. Within twelve months following approval, the applicant will submit progress information indicating that the business has site plan approval, committed financing for, and site control of the qualified business facility.

APPROVAL REQUEST:

The Members of the Authority are asked to approve the proposed Grow New Jersey grant to encourage SSB Manufacturing Company to increase employment in New Jersey. The recommended grant is contingent upon receipt by the Authority of evidence that the company has met certain criteria to substantiate the recommended award. If the criteria met by the company differs from that shown herein, the award amount and the term will be lowered to reflect the award amount that corresponds to the actual criteria that have been met.

DEVELOPMENT OFFICER: D. Ubinger**APPROVAL OFFICER:** J. Horezga

BOND RESOLUTIONS

MEMORANDUM

TO: Members of the Authority

FROM: Timothy Lizura
President/Chief Operating Officer

DATE: June 9, 2015

SUBJECT: NJEDA/Motor Vehicle Commission
Application # P14947

BACKGROUND

The Motor Vehicle Security and Customer Service Act (the “2003 Act”) amended certain provisions of the 1994 Good Driver Protection Act (the “1994 Act”) and was signed into law on January 28, 2003. The 2003 Act created the New Jersey Motor Vehicles Commission (“MVC”) in, but not of, the Department of Transportation and abolished the Division of Motor Vehicles (“DMV”). The 2003 Act authorized the Authority to issue tax-exempt bonds to fund projects of the MVC. The MVC bonds were to be repaid from amounts on deposit in the DMV Surcharge Fund (established by the 1994 Act) which amounts are derived from surcharges assessed against drivers who committed certain specified violations.

In June 2003, the Authority closed on a \$159,998,107 tax exempt bond financing (the “2003 Series Bonds”), proceeds of which were to be utilized by the MVC for capital improvements to existing facilities, furniture, fixtures, machinery, computer systems and electronic equipment (the “Commission Project”). The Commission Project also included the transfer by the MVC of a portion of the proceeds of the 2003 Series Bonds to the Administrative Office of the Courts for improvements to the Automated Traffic System. The 2003 Series Bonds were issued as capital appreciation bonds with interest rates ranging from 3.52% to 3.90% with a final maturity of July 1, 2015. Goldman, Sachs & Co. was the managing underwriter for the 2003 Series Bonds. The 2003 Series Bonds were secured solely by and payable from payments made by the State to the Authority in accordance with a contract between the Authority and Treasurer and are subject to annual appropriation by the Legislature. Further, the Authority and MVC entered into a Commission Funding Agreement to provide for the application of the proceeds of the 2003 Series Bonds to the costs of the Commission Project.

APPROVAL REQUEST

On July 1, 2015, the final maturity date of the 2003 Series Bond, approximately \$19 million will remain in the 2003 Series Bonds Project Fund. It is the desire of the Treasurer and the MVC that these remaining monies continue to be available to the MVC for the Commission Project after the close-out of the 2003 Series Bonds Project Fund.

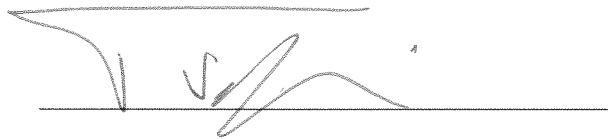
Therefore, the Members of the Authority are requested to approve the execution by an Authorized Officer of the Authority of a depositary agreement ("Depositary Agreement") with the Bank of New York Mellon, in its capacity as the Trustee for the 2003 Series Bonds, for the deposit and application of all remaining Project Fund monies on July 1, 2015, into a depositary account. The funds transferred into the depositary account will be applied to the costs of the Commission Project. Upon completion of the Commission Project, any amounts remaining will be disbursed as the Treasurer determines, upon advice of the Attorney General's Office.

In addition, the Members are requested to approve the execution by an Authorized Officer of the Authority of the Amendment to the Commission Funding Agreement, which will address the use of the funds in the depositary account and the procedure for their disbursement.

Professionals for this transaction were selected in compliance with Executive Order No. 26. Through a competitive RFP/RFQ process performed by the Attorney General's Office on behalf of Treasury, Chiesa, Shahinian & Giantomasi PC was selected as Bond Counsel to provide advice on this matter. The Bank of New York Mellon is the Trustee under the 2003 Bond Resolution and as such is designated as the Depositary under the Depositary Agreement.

RECOMMENDATION

Based upon the above description, the Members are requested to approve (i) the execution of the Depositary Agreement and the Amendment to the Commission Funding Agreement by an Authorized Officer of the Authority; (ii) the use of the aforementioned professionals; and (iii) authorize Authority staff to take all necessary actions incidental to the execution of the Depositary Agreement and the Amendment to the Commission Funding Agreement, subject to final review and approval of all terms and documentation by the Treasurer, Bond Counsel and Attorney General's Office.

A handwritten signature in dark ink, consisting of a series of loops and strokes, positioned above a horizontal line.

Prepared by: Teresa Wells

MEMORANDUM

TO: Members of the Authority

FROM: Timothy Lizura
President/Chief Operating Officer

SUBJECT: NJEDA/School Facilities Construction Refunding Bonds and Termination of Outstanding Interest Rate Swap Agreements

DATE: June 9, 2015

SUMMARY OF PROPOSED FINANCING

The Authority is currently being asked to approve the issuance of one or more series of the 2015 School Facilities Construction Refunding Bonds (the "2015 Refunding Bonds") and various related actions described below. The 2015 Refunding Bonds (to be issued in an amount not to exceed \$600 million) will be used to (i) refund or pay the principal of and/or interest on a portion of certain currently outstanding School Facilities Construction Bonds ("Prior Obligations"), (ii) pay the termination costs attributable to any or all of the Authority's existing School Facilities Construction Program interest rate swap agreements and (iii) pay the costs of issuance of the 2015 Refunding Bonds. The 2015 Refunding Bonds will be issued as direct purchase taxable bonds to Bank of America, N.A. pursuant to a bank loan agreement to be entered into between the Authority and Bank of America, N.A. (the "Agreement") and the Authority's obligations thereunder will be secured by the State Contract (as defined below) and the Resolution. Since the proceeds of the 2015 Refunding Bonds will be used for purposes that qualify as refunding under State law, the 2015 Refunding Bonds will not count against the statutory debt issuance limitation placed on the School Facilities Construction Program.

BACKGROUND

Since April 2001, the Authority has issued prior series of tax-exempt and taxable School Facilities Construction Bonds and Notes in the aggregate principal amount of \$9,608,954,000 for new money projects under the Educational Facilities Construction and Financing Act, L. 2000, c. 72, as amended and supplemented by L. 2007, c. 137 and L. 2008, c. 39 (the "Act"). Additionally, the Authority has issued prior series of refunding bonds in the aggregate principal amount of \$10,584,975,000 that restructured and refunded all or a portion of several Series of tax-exempt and taxable bonds and notes, previously issued under the Act.

In 2003 and 2004, the Authority entered into \$3.9 billion of interest rate swap agreements in connection with the School Facilities Construction Program ("School Program"). Following several modifications and restructurings, in 2008 the School Program had \$3.6 billion of interest rate swap agreements. In 2011, the Authority successfully terminated \$1.27 billion of its School Program

interest rate swap agreements. In 2013, the Authority successfully terminated another \$1.13 billion of its School Program interest rate swap agreements. The 2011 and 2013 transactions met the Treasurer's three-pronged test of: (i) generating net present value savings; (ii) generating cumulative savings; and (iii) no extension of the final maturity of the bonds being refunded. Currently, the Authority remains a party to \$1.15 billion of School Program interest rate swap agreements.

PLAN OF FINANCE

The current request for approval represents the first phase of a proposed two phase comprehensive plan of finance (the "Comprehensive Plan").

The first phase of the Comprehensive Plan aligns with the State's overall management of the School Facilities Construction Bond Program. The Authority, with Board approval, will issue the 2015 Refunding Bonds as taxable fixed rate direct purchase bonds to Bank of America, N.A. pursuant to the Agreement to refund or pay all or a portion of the principal and/or interest payments on one or more Series of Prior Obligations and pay the termination cost of some or all of the Authority's existing School Program interest rate swap agreements. A list of the Prior Obligations can be found in the attached Appendix A. A list of the existing School Program interest rate swap agreements can be found in the attached Appendix B. The transaction is expected to close on or about June 30, 2015.

The components of the second phase of the Comprehensive Plan will be presented to the Board at a future meeting. Due to time constraints in preparing the State's public disclosure document, the second phase of the Comprehensive Plan cannot be implemented prior to June 30, 2015. For a more detailed explanation of the currently proposed Comprehensive Plan, please see the attached Appendix C from Bank of America Merrill Lynch.

It is expected that when both phases of the Comprehensive Plan are implemented in full, the transactions in the aggregate will meet the Treasurer's three-pronged test of: (i) generating net present value savings; (ii) generating cumulative savings; and (iii) no extension of the final maturity of the bonds being refunded.

APPROVAL REQUEST

The Authority is being requested to approve the adoption of the Thirty-Fourth Supplemental School Facilities Construction Bond Resolution (the "Thirty-Fourth Supplemental Resolution") authorizing the issuance of one or more series of 2015 Refunding Bonds in an amount not to exceed \$600 million. The 2015 Refunding Bonds will be issued for the purposes described above. The 2015 Refunding Bonds will be secured by the State Contract with the Treasurer, as amended by Amendment No.1 to the State Contract dated April 22, 2010, to implement the funding provisions of the 2008 Amendment to the Act (the "State Contract").

This transaction involves the issuance of direct purchase taxable bonds to Bank of America, N.A. pursuant to the Agreement as described above (without delivery of a preliminary or final official statement). The State will not be providing its public disclosure (commonly referred to as "Appendix I") regarding financial and other information relating to the State.

The 2015 Refunding Bonds will be issued as fixed rate taxable bonds, and subject to the following parameters, all as determined by an Authorized Officer of the Authority, in consultation with the Treasurer, Office of Public Finance, Attorney General's Office and Bond Counsel:

1. The final maturity of any 2015 Refunding Bonds will not exceed 25 years from the date of issuance;
2. The initial interest rate for the 2015 Refunding Bonds shall not exceed 6.50%;
3. The maximum rate payable on the 2015 Refunding Bonds shall not exceed 12%;

The Authority is also being asked to approve certain actions of, and delegation of actions to, an Authorized Officer of the Authority with information provided by the Treasurer, Bond Counsel, and the Attorney General and in consultation with, the Office of Public Finance, Bond Counsel and the Attorney General's Office, as applicable, and as approved by the Treasurer, which actions are more fully set forth in the Thirty-Fourth Supplemental Resolution, which is incorporated herein by reference, and will be memorialized in one or more Series Certificates, and may include, without limitation:

1. To determine the date of issuance, sale and delivery, the maturity date, the principal amount and the redemption provisions of each series of 2015 Refunding Bonds in accordance with the parameters set forth above;
2. To negotiate, execute, deliver and perform the Agreement;
3. To select and appoint a firm to serve as bidding agent, upon recommendation of the Treasurer based on Treasury's competitive RFP/RFQ process, to solicit bids and to enter into or purchase Defeasance Securities (as defined in Sections 101 and 1201(2) of the Resolution) with proceeds of any Series 2015 Refunding Bonds issued to refund the Prior Obligations, in the event that such Authorized Officer of the Authority determines that it is advantageous to the Authority to invest any such proceeds in Defeasance Securities;
4. To negotiate and approve amendments to any one or more existing interest rate swap agreements or terminate any one or more interest rate swap agreements, in whole or in part, if such Authorized Officer of the Authority, in consultation with the Treasurer and the swap advisor, determines that any such amendment or termination is necessary or desirable, provided that (i) any such amendment shall not increase the original notional amount of such interest rate swap agreement, (ii) any such amendment shall not extend the final maturity date of any such interest rate swap agreement beyond (x) the final maturity date of the Series of Bonds to which such interest rate swap agreement relates or (y) if such interest rate swap agreement does not relate to any Series of Bonds, March 1, 2035, and (iii) any renegotiated fixed rate payable by the Authority under any such amended interest rate swap agreement shall not exceed five and a half percent (5.50%) per annum. Such amendments may include, without limitation:

- a. Amendments which result in the Authority both paying and receiving a fixed

rate;

- b. Amendments to convert an interest rate swap agreement to a basis swap, provided that the floating rate payable by the Authority is advantageous;
 - c. Amendments to relinquish or modify the Authority's right to optionally terminate such interest rate swap agreement or to provide the swap provider with an option to cancel such interest rate swap agreement on a future date or dates in exchange for the payment by the swap provider of a premium; and
 - d. Amendments to restructure the floating rate payments received by the Authority from a swap provider, whether or not in exchange for the payment by the swap provider of a premium.
5. To negotiate, in consultation with the Treasurer and the swap advisor, the swap termination payment(s) payable in connection with the termination, in whole or in part, of any interest rate swap agreement, which swap termination payments shall not exceed such amount determined by such Authorized Officer of the Authority, in consultation with the Treasurer and the swap advisor, to be in the best interests of the State.
6. To negotiate and enter into bilateral agreements (the "Bilateral Agreements") with the counterparties to any or all of the swap agreements or to agree to adhere to the Dodd-Frank Wall Street Reform and Consumer Protection Act ISDA Protocol(s) with respect to any or all of the swap agreements.

Attached as Appendix D is a brief description of the terms and conditions of the Agreement as well as the form of the Agreement, which will be approved by the Board in the Thirty-Fourth Supplemental Resolution.

In exercising the Authority's discretion to approve specific transactions authorized under the Thirty-Fourth Supplemental Resolution, it is anticipated that the Authorized Officers of the Authority will make decisions on behalf of the Authority in consultation with the Treasurer. The Board will be updated upon completion of the transaction.

Professionals for the Comprehensive Plan were selected in compliance with Executive Order No. 26. Chiesa, Shahinian & Giantomasi P.C. was selected as Bond Counsel through a competitive RFP/RFQ process performed by the Attorney General's Office on behalf of Treasury for State appropriation backed transactions. Through Treasury's competitive RFP/RFQ process the following professionals were chosen for the Comprehensive Plan: Bank of America Merrill Lynch as senior managing underwriter and Bank of America, N.A. as bank loan provider, PFM Swap Advisors LLC, as swap advisor and U.S. Bank National Association as Trustee, Paying Agent, Registrar, and Escrow Agent. The Thirty-Fourth Supplemental Resolution will also authorize Authority staff to take all necessary actions incidental to the issuance of the 2015 Refunding Bonds and the termination of the interest rate swaps subject to the Treasurer's approval, including without limitation, the

selection of additional professionals, if any, pursuant to a competitive process utilizing Treasury's RFP/RFQ process in accordance with Executive Order No. 26 and Executive Order No. 37.

RECOMMENDATION

Based upon the above description, and subject to the criteria set forth above, the Authority is requested to: (i) approve the adoption of the Thirty-Fourth Supplemental Resolution authorizing the issuance of the 2015 Refunding Bonds as direct purchase taxable bonds to Bank of America, N.A. pursuant to the Agreement in the total aggregate principal amount not to exceed \$600 million as well as other matters in connection with the issuance and sale thereof and otherwise described above and in connection with the termination of some or all of the existing School Program interest rate swap agreements, in whole or in part; (ii) approve the several actions and delegation of actions to an Authorized Officer of the Authority as may be necessary or advisable in order to issue the 2015 Refunding Bonds and terminate the interest rate swap agreements and to undertake the other transactions described in (i) above on terms which are in the best interest of the State; (iii) authorize the use of the aforementioned professionals; and (iv) authorize Authority staff to take all necessary actions incidental to the issuance of the 2015 Refunding Bonds; subject to final review and approval of all terms and documentation by Bond Counsel and the Attorney General's Office.

A handwritten signature in dark ink, consisting of a series of loops and a long horizontal stroke, positioned above a solid horizontal line.

Prepared by: Teresa Wells

Appendix A – List of Prior Obligations

School Facilities	Original Par	
Construction Bonds & Notes	Amount	Dated Date
2004 Series I	250,000,000	8/31/2004
2004 Series J4	116,750,000	8/31/2004
2005 Series K	700,000,000	1/27/2005
2005 Series N	677,465,000	5/23/2005
2006 Series S	100,000,000	11/2/2006
2007 Series U	300,000,000	10/4/2007
2008 Series W	455,940,000	4/30/2008
2008 Series Y	200,000,000	6/3/2008
2009 Series Z	175,000,000	1/29/2009
2009 Series AA	183,670,000	6/4/2009
2009 Series BB	200,000,000	8/20/2009
2010 Series CC-1	104,115,000	5/17/2010
2010 Series CC-2	48,910,000	5/17/2010
2010 Series DD-1	667,420,000	5/17/2010
2010 Series DD-2	35,740,000	5/17/2010
2011 Series C- SIFMA Notes	65,620,000	1/20/2011
2011 Series D- LIBOR Notes	150,000,000	1/20/2011
2011 Series EE	777,260,000	1/20/2011
2011 Series FF	123,220,000	1/20/2011
2011 Series E- SIFMA Notes	267,495,000	2/22/2011
2011 Series F- LIBOR Notes	45,000,000	2/22/2011
2011 Series GG	498,035,000	2/22/2011
2012 Series II	407,135,000	5/2/2012
2012 Series H- SIFMA Notes	119,060,000	10/3/2012
2012 Series KK	136,880,000	10/3/2012
2012 Series MM	24,365,000	10/3/2012
2013 Series I-SIFMA Notes	380,515,000	1/31/2013
2013 Series NN	1,629,710,000	1/31/2013
2013 Series 00	243,270,000	1/31/2013
2014 Series PP	553,845,000	5/6/2014
2014 Series QQ (Taxable)	615,465,000	5/6/2014
2014 Series RR	60,000,000	5/6/2014
2014 Series SS	197,140,000	5/6/2014
2014 Series TT	52,860,000	5/6/2014
2014 Series K - SIFMA Notes	119,060,000	10/17/2014
2014 Series UU	525,000,000	10/17/2014

Appendix B – List of outstanding School Program Interest Rate Swap Agreements

Counterparty	Outstanding Notional Amount	Amended Effective Date	Amended Termination Date	Fixed Rate	Floating Index
Bank of America, N.A.	\$ 64,007,500	6/15/2013	9/1/2031	4.40740%	71.98% 1-Month LIBOR
Bank of Montreal	121,173,442	6/15/2013	9/1/2034	4.54850%	62% 1-Month LIBOR+40 bps
Goldman Sachs Mitsui Marine Derivative Products, L.P.	49,147,500	6/15/2013	3/1/2031	4.29590%	70.8% 1-Month LIBOR
Goldman Sachs Mitsui Marine Derivative Products, L.P.	78,167,500	6/15/2013	9/1/2031	4.40740%	71.98% 1-Month LIBOR
Goldman Sachs Mitsui Marine Derivative Products, L.P.	91,057,500	6/15/2013	9/1/2032	4.39900%	71.57% 1-Month LIBOR
Merrill Lynch Capital Services, Inc.	179,715,804	6/15/2013	3/1/2035	4.25100%	62% 1-Month LIBOR+40 bps
Natixis Financial Products, Inc.	95,420,217	6/15/2013	9/1/2033	4.48900%	62% 1-Month LIBOR+40 bps
Royal Bank of Canada	90,460,000	6/15/2013	3/1/2034	4.51240%	62% 1-Month LIBOR+40 bps
UBS AG, Stamford Branch	64,322,500	1/20/2011	9/1/2029	4.06250%	71.13% 1-Month LIBOR
UBS AG, Stamford Branch	64,790,000	1/20/2011	3/1/2030	4.17625%	74.24% 1-Month LIBOR
UBS AG, Stamford Branch	116,097,500	1/20/2011	9/1/2032	4.39900%	71.57% 1-Month LIBOR
Wells Fargo Bank, N.A.	49,332,500	6/15/2013	9/1/2029	4.06250%	71.13% 1-Month LIBOR
Wells Fargo Bank, N.A.	33,912,500	6/15/2013	3/1/2030	4.17625%	74.24% 1-Month LIBOR
Wells Fargo Bank, N.A.	49,147,500	6/15/2013	3/1/2031	4.29590%	70.80% 1-Month LIBOR
TOTAL:	<u>\$1,146,751,963</u>				

Appendix C – Summary of Comprehensive Plan

New Jersey Economic Development Authority School Facilities Construction Program 2015 Comprehensive Plan of Finance

Background

The New Jersey Economic Development Authority (the “Authority”) in connection with the School Facilities Construction Program (the “School Program”) entered into \$3.9 billion of forward-starting interest rate swap agreements with 9 different counterparties between 2003 and 2004 to protect its future new money bonding needs against projected interest rate increases. Reflecting all modifications and restructurings of debt and interest rate swap agreement portfolios through 2008, the School Program had \$3.6 billion of interest rate swap agreements and \$1.8 billion of variable rate demand bonds (“VRDBs”) backed by bank letters of credit.

In 2011, the Authority took advantage of market dynamics and successfully terminated \$1.27 billion of its School Program interest rate swap agreement portfolio and refinanced all \$1.8 billion of its VRDB program into fixed rate bonds or floating rate notes (“FRNs”) that did not require associated bank letters of credit. The 2011 transaction was accomplished while meeting the Treasurer’s three-pronged test of: (i) generating net present value savings; (ii) generating cumulative savings; and (iii) no extension of the final maturity of the bonds being refunded.

In 2013, the Authority again took advantage of market dynamics and successfully terminated another \$1.13 billion of its School Program’s interest rate swap agreement portfolio and reduced the roll-over requirements of its variable rate portfolio through the use of longer term FRNs. The 2013 transaction also met the Treasurer’s three-pronged test.

2015 Current Situation

The Authority remains a party to \$1.15 billion of notional amount of interest rate swap agreements relating to the School Program among eight different counterparties. To compliment this interest rate swap agreement portfolio, the School Program has a matched \$1.15 billion of FRNs outstanding. During Fiscal Year 2016, \$242 million of these FRNs (Series 2011E-1) are scheduled to mature (“roll over”) on February 1, 2016 and are callable at par on or after August 1, 2015. Currently, the Authority’s School Program has approximately \$8.7 billion of debt outstanding.

2015 Comprehensive Plan of Finance

Under current market conditions, the Authority has the ability to refund School Program debt to generate debt service savings. These savings will be used to i) terminate a significant portion, if not all, of the School Program’s \$1.15 billion interest rate swap agreements portfolio; and ii) to generate a more leveled debt service structure from FY17 through FY25. In addition, under the proposed comprehensive plan of finance, debt service of all refunding debt will be structured with principal payment dates on June 15th, thereby generating significant intra-fiscal year cash flow relief by better aligning the timing of debt repayments with the State’s General Fund and Property Tax Relief Fund receipts.

As currently contemplated, the proposed comprehensive plan of finance would be executed in two phases. Phase I is comprised of the issuance of taxable fixed rate direct purchase bonds to fund the termination of a significant portion, if not all, of the School Program’s derivatives portfolio and potentially to refund prior School Program debt. Phase II is comprised of three primary components: i) the issuance of tax-exempt and taxable fixed rate publicly offered bonds to accomplish the refunding of outstanding bonds for debt service and budgetary savings and to fund the termination of a portion of the School Program’s derivatives portfolio; ii) the

issuance of \$500 million in par amount of tax-exempt fixed rate bonds to fund new money projects; and iii) the issuance of \$242 million of tax-exempt FRNs to refinance the maturing 2011E-1 FRNs.

Under current market conditions, the proposed comprehensive plan of finance would be structured as follows*:

Phase I:

- \$[500] million taxable, fixed rate, direct purchase bonds amortizing from [2021-2023];

Phase II:

- \$[451] million tax-exempt, fixed rate, publicly offered bonds amortizing from [2025-2028];
- \$[1,303] million taxable, fixed rate, publicly offered bonds amortizing from [2016 – 2028]
- \$[500] million tax-exempt, fixed rate, publicly offered bonds amortizing from [2029 – 2040]; and
- \$242 million tax-exempt, floating rate notes amortizing in [_____].

Should market conditions shift, the composition of the transaction may change. An ongoing comparison of the direct purchase and public bond markets will continue up until the time of sale. Under current market conditions, the comprehensive plan of finance is structured to meet the following financing objectives:

- Meet the Treasurer’s three-pronged test related to refundings:
 - Generate net present value savings;
 - Generate gross savings; and
 - No extension of final maturity of the bonds being refunded.
- Eliminate all or a significant portion of the School Program’s interest rate swap agreements without using statutory bonding authority
- Generate a more levelized debt service structure from FY17 – FY25 Achieve intra-fiscal year cashflow savings from FY16-FY18
- Fund \$[500] million in new money
- Roll \$242 million 2011E-1 FRNs

** All amounts and amortization dates are subject to change*

Appendix D

Outline of Terms and Conditions of the Loan Agreement

Security	The loan is secured as Parity Obligations under the School Facilities Construction Bond Resolution.
Funding	The loan is fully funded upon closing.
Terms and Conditions	
Event of Non-Appropriation	An event of non-appropriation is not an event of default under the loan agreement.
Mandatory Prepayment	Generally, if the Authority fails to pay when due the principal of and interest on the loan, the loan will, upon notice from the Bank, become subject to Mandatory Prepayment and the then outstanding principal amount of the loan will be re-amortized so that it is due in equal annual payments over the earlier of three (3) years, the maturity date of the loan or the date the loan is actually repaid in full, at an interest rate of 12%. The loan can be returned to its original amortization upon notice by the Bank at any time prior to the Mandatory Prepayment Amortization Commencement Date.
Step-up in Interest Rate due to Rating Downgrades on Parity Debt	The fixed rate of interest on the loan will increase if the ratings on outstanding School Facilities Construction Bonds on parity (“Parity Bonds”) with the bonds issued to secure the Authority’s obligations to pay amounts due under the loan agreements are downgraded. The Parity Bonds are currently rated A3/A-/A-. The increase in interest rates takes effect upon the downgrade of ratings on the Parity Debt at the following levels and in the corresponding increase in the interest rate is in the following amounts: Baa1/BBB+/BBB+ 0.25% Baa2/BBB/BBB 0.25% Baa3/BBB-/BBB- 0.25%
Increases in Cost	If a Change in Law (as defined in the loan agreements) occurs which imposes additional costs upon the Bank (increased capital reserve requirements, tax law changes, etc.), upon request of the Bank, the Authority is obligated to pay such additional costs capped at a maximum amount of 0.05% of the outstanding principal amount of the loan. Such amounts may only be collected on retroactively imposed charges for a period of up to 9 months.
Events of Default	See Section 7.01 of the attached loan agreement. The Events of Default are similar to those set forth in the Bond Resolution. Under a default, the Bank has the right to charge the Default Rate of interest (12%) and upon the occurrence of certain Events of Default, to require Mandatory Prepayment of the loan (as described above).
Public Disclosure	No official statement is prepared in connection with the loan agreement. The loan will be disclosed in the State’s and the Authority’s financial

	reports.
Prepayment	The loan is optionally pre-payable at any time in accordance with the “make whole” call feature.

MEMORANDUM

TO: Members of the Authority

FROM: Timothy J. Lizura
President and Chief Operating Officer

SUBJECT: NJEDA/State Appropriation-Backed Bonds, including, without limitation,
School Facilities Construction Bond Portfolio
Approval of Swap Portfolio Monitor & Swap Advisory Consultant

DATE: June 9, 2015

SUMMARY OF APPROVAL REQUEST

Approval of the recommendation by the State Treasurer of PFM Swap Advisors LLC (“PFM Swap Advisors”) to serve as swap portfolio monitor providing valuations, reporting and other monitoring services (“Swap Monitor”) and swap advisory consultant providing consulting services (“Swap Consultant”) to the State and the Authority on any transactional matters relating to the Authority’s existing swaps associated with the School Facilities Construction Bond Portfolio and any additional swaps that the Authority may enter into with respect to State appropriation-backed bonds it issues.

BACKGROUND

In connection with its outstanding portfolio of School Facilities Construction Bonds and Notes, the Authority is a party to fourteen interest rate swap agreements with eight different counterparties with an aggregate outstanding notional amount of approximately \$1.15 billion (as of April 30, 2015). The purpose of these swap agreements is to manage interest rate risk associated with the Authority’s variable rate debt.

PFM Swap Advisors, procured by the Department of the Treasury, has served as the State’s Swap Monitor and Swap Consultant since 2011, and in these roles, has provided Swap Monitor and Swap Consultant services to the Authority, as well as the other State authorities which were parties to swap agreements. Since 2011, the other authorities with State-appropriation backed bonds have terminated all of their swap agreements. Thus, currently, the Authority is the only State party requiring the services of a Swap Monitor and Swap Consultant. The State’s current contract with PFM Swap Advisors will expire on June 30, 2015.

APPROVAL REQUEST


The Office of Public Finance (“OPF”) and the Treasurer’s Office solicited proposals on behalf of the Authority, via a Request for Proposals (“RFP”) in accordance with Executive Order #26 (Whitman) from firms to provide swap portfolio monitoring services and swap advisory consultant services. The Swap Monitor will be required to provide valuations, reporting and other monitoring services on any matters relating to the Authority’s existing portfolio of swaps, as well as on any additional swaps relating to State appropriation-backed bonds that the Authority may enter into during the term of the engagement as defined below. The Swap Consultant will be required to act as the advisor to the State and the Authority by providing consulting services on any transactional matters relating to the Authority’s existing portfolio of swaps as well as any additional swaps relating to State appropriation-backed bonds that may be entered

into during the term of the engagement. The Swap Consultant also will be required to serve as the Qualified Independent Representative (“QIR”) for the Authority as set forth by the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”).

OPF received a total of six (6) proposals in response to the RFP for Swap Monitor and six (6) proposals in response to the RFP for Swap Consultant. An evaluation committee composed of individuals from the Authority and OPF (the “Evaluation Committee”), subsequently reviewed, discussed and scored the proposals. PFM Swap Advisors submitted proposals to serve the Authority in both capacities. PFM Swap Advisors received the highest score for both roles. Based on its review, the Evaluation Committee recommended that PFM Swap Advisors be selected to serve as Swap Monitor and Swap Consultant for the Authority. In accordance with the RFP, the Treasurer has selected PFM Swap Advisors as the Swap Monitor and Swap Consultant for the Authority, subject to the approval of the Authority. The Swap Monitor and the Swap Consultant will be engaged for a term of one (1) year with the option by the State, on behalf of the Authority, in its sole discretion, to renew for four (4) additional terms of one (1) year each (“term of engagement”).

RECOMMENDATION

Based upon the above description, the Members are requested to approve the appointment of PFM Swap Advisors as Swap Monitor and Swap Consultant for the Authority’s existing swaps associated with the School Facilities Construction Bond Portfolio and any additional swaps that the Authority may enter into with respect to State appropriation-backed bonds it issues during the engagement; and to authorize Authority staff to enter into agreements with PFM Swap Advisors memorializing the terms of the contracts, subject to the review and approval of the terms of the contract by the Attorney General’s Office, and to take all necessary actions incidental to such appointments.



Prepared by: Teresa Wells

AMENDED BOND RESOLUTIONS

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY - REFUNDING BOND PROGRAM**

APPLICANT: Wyckoff Family YMCA

P40913

PROJECT USER(S): Same as applicant

* - indicates relation to applicant

PROJECT LOCATION: 691 Wyckoff Avenue

Wyckoff Township (N)

Bergen

GOVERNOR'S INITIATIVES: () Urban () Edison (X) Core () Clean Energy

APPLICANT BACKGROUND:

The Wyckoff Family YMCA, ("Wyckoff Y"), is a 501(c)(3) not-for-profit entity and has been operating in New Jersey since 1944. The Wyckoff Y provides programming for all ages, including youths and teens, groups with special needs, and adults. In addition to its fitness and aquatic programs, the Wyckoff Y provides day care, kindergarten, after-school programs, and summer day camp for over 500 children in the area. Joyce Vottero is the Executive Director.

The Authority Assisted Wyckoff Y in 1997 with a \$3,000,000 tax-exempt bond (P008622) for the construction of a 36,000 sf. addition to its facility and to refinance an existing mortgage on the building. In 2003, the Authority issued an \$8,000,000 tax-exempt bond (P14368 & P15144) enabling it to refund a portion of the prior bond and construct and equip a 42,000 sf. addition to the property it currently occupies.

The applicant is a 501(c)(3), not-for-profit entity for which the Authority may issue tax-exempt bonds as permitted under Section 103 and Section 145 of the Internal Revenue Code, as amended, and is not subject to the State Volume Cap limitation, pursuant to Section 146(g) of the Code.

REFUNDING REQUEST:

Authority assistance will enable the applicant to refund the outstanding principal balance of the 2003 bonds and pay costs of issuance. The difference between the project costs and the bond amount will be funded through applicant's equity.

FINANCING SUMMARY:

BOND PURCHASER: TD Bank, N.A. (Direct Purchase)

AMOUNT OF BOND: up to \$3,500,000 tax-exempt bond

TERMS OF BOND: 7 years; Variable interest rate at the tax-exempt equivalent of the 1 month LIBOR plus 0.75%. On the closing date the borrower may enter into a fixed interest rate swap for 7 years. Indicative fixed interest rate as of 4/30/2015 is 1.75%

ENHANCEMENT: N/A

PROJECT COSTS:

Principal amount of bond(s) to be refund	\$3,500,000
Finance fees	\$20,000
Closing Costs	\$8,750
TOTAL COSTS	\$3,528,750

PUBLIC HEARING: 06/09/15 (Published 05/26/15) **BOND COUNSEL:** Chiesa, Shahinian & Giantomasi,
DEVELOPMENT OFFICER: M. Athwal **APPROVAL OFFICER:** J. Horezga

LOANS/GRANTS/GUARANTEES

CAMDEN ECONOMIC RECOVERY BOARD



MEMORANDUM

TO: Members of the Authority

FROM: Timothy J. Lizura, President and Chief Operating Officer

DATE: June 9, 2015

SUBJECT: Modifications and Extensions Request for Previously Approved Economic Recovery Board Projects

Request

The Members of the Authority are asked to approve the amended scopes of work, reallocations of funding, extensions, and dissolutions of the subject grants as shown below.

Background

Since inception in 1995 the Camden Economic Recovery Board (“ERB”) has played a vital role in working to redevelop the various neighborhoods and promote economic growth in the City of Camden. As the redevelopment needs of the City have evolved, staff has collaborated with the Camden Redevelopment Agency (“CRA”) and other grant recipients to evaluate the status of projects underway.

EDA staff has worked with the project managers to confirm projects that have been completed, and progress and timelines, as well as the anticipated amount of final disbursement requests, if any for projects underway. For projects that have been completed, any unused funding commitments will be canceled with funding made available for other eligible projects.

1. Tire and Battery Remediation – P20266

On February 11, 2008, the Members approved a \$700,000 non-recoverable infrastructure grant to the CRA to support the environmental remediation work plan for the former Tire & Battery site located at 1350 Admiral Wilson Boulevard, which is in the Gateway Redevelopment Area of the City of Camden. On January 30, 2014, ERB extended the grant maturity to March 31, 2015.

Soil remediation is now complete with a total of \$253,591 being disbursed; a No Further Action for soils was issued by the New Jersey Department of Environmental Protection on August 31, 2010. However, CRA is required to continue monitoring groundwater for an additional year and needs an additional \$200,000 to complete the final stages of monitoring and obtain final DEP approval.

Requested Action:

Consent to a grant maturity extension for the \$200,000 to March 31, 2016 is requested at this time. The \$246,409 in undisbursed funding commitment will be cancelled.

2. Building 8/Radio Lofts – P17493

On October 3, 2006, the Members approved a \$1,997,716 non-recoverable infrastructure grant to the CRA to complete environmental remediation of the project site, including asbestos abatement, lead-based paint abatement, PCB remediation, soft demolition, hazmat removal, basement remediation, and fire standpipe installation. The building is located in the Waterfront District of the City of Camden.

Completion of this project has been delayed due to additional internal environmental contamination issues that were determined after the clean-up began. This project is ongoing with a total of \$1,682,687 being disbursed and the remaining \$315,029 expected to be needed as the clean-up continues.

Requested Action:

Consent to a grant maturity extension and an extension of time for the project completion to March 31, 2016.

3. Central Waterfront Housing & Temporary Parking – P16137

On September 20, 2004, the Members approved a \$3,910,500 recoverable grant to fund the construction of parking facilities in the Central Waterfront neighborhood. The scope of the project included the acquisition and development of 154 properties, the relocation of residents, demolition of structures, and construction/improvement of 1,500 temporary parking spaces to support the parking requirement for waterfront entertainment center activities (Susquehanna Bank Center).

On October 3, 2006 ERB approved an increase to the amount of the recoverable grant to \$5,000,000 to support an increase in costs for acquisition, relocation, and demolition. On December 21, 2014 ERB approved a modification to the project scope, defining the boundaries of the project to an 8 block area. Five properties remain to be acquired with a cost of \$376,132. This project is ongoing with \$4,916,423 being disbursed and the remaining \$83,577 expected to be needed in the next year to acquire the final five properties.

Members have previously approved several extensions of the term of this grant with the final approved extension being June 30, 2015.

Requested Action:

Consent to extension of the recoverable grant maturity date to June 30, 2016.

4. Neighborhood & Redevelopment Planning Grant I – P15686

On March 23, 2004, the Members approved a \$641,250 non-recoverable grant to help fund a portion of seven neighborhood plans and fourteen redevelopment plans for the City of Camden. On January 23, 2007, the Members approved an increase in the grant amount to \$723,947 to fund an additional redevelopment plan for the Dudley neighborhood, a portion for a Camden Historic Survey, and for additional staff time needed to update the plans.

On January 30, 2014, the Members also approved a reallocation in the amount of \$107,290 of the remaining funds to be used for the North Camden Waterfront Redevelopment Study and Plan, the North Camden Residential Redevelopment and Study Plan, and the Whitman Park Study and Plan to meet the City's redevelopment planning needs. This project is on going with \$599,369 being disbursed and the remaining \$124,576 expected to be needed in the next two years. The Whitman Park Redevelopment Study and Plan is complete for submission to the City's Planning Board and City Council for adoption by July 2015.

Additionally, a change in the scope of the project has been requested in order to tie funding to more specific neighborhood projects, limited scope redevelopment, and projects tied to Employment Opportunity Act (EOA) incentives. CRA is also requesting the ability to combine the Neighborhood & Redevelopment Planning Grant I (P15686) with Planning Grant Phase II (P16904), as the consolidation of funds for necessary City planning activities in EOA related areas will allow CRA to meet planning priorities of the City as they evolve.

Members have previously approved several extensions of the term of this grant with the final approved extension being September 30, 2015.

Requested Action:

Consent to an extension of the grant maturity date to September 30, 2016 and a change in project scope as outlined above.

5. Planning Grant Phase II – P16904

On November 22, 2005, the Members approved a \$445,050 recoverable planning grant to the CRA to prepare five neighborhood plans, a City-wide Housing Production Strategy, a City-wide Industrial Site Inventory, and develop a Project Decision Model.

The original plan was to produce five neighborhood plans for the Gateway, Bergen Square, Central Waterfront, Cooper Plaza, and Marlton neighborhoods. Changes in administration and various lawsuits led to delays in implementing several previously approved plans.

This project is ongoing with \$190,500 being disbursed and the remaining \$254,500 expected to be needed in the next two years.

Requested Action:

Consent to an extension of the grant maturity date to September 30, 2016 (to match the requested maturity extension of Planning Grant I, and a change in the scope (including related funding designations), to align funding with specific neighborhood projects, limited scope redevelopment, and projects tied to NJEDA incentives. Finally, combine the Planning Grant Phase II (P16904) with the Neighborhood & Redevelopment Planning Grant I (P15686) to consolidate the funds for City planning activities in EOA related areas to allow CRA to meet planning priorities of the City as they evolve.

6. Mixed Site Acquisition – P20265

In March 2008, the Members approved a \$1,561,975 recoverable infrastructure grant to the CRA to fund the acquisition of 137 vacant lots and buildings within the City of Camden.

To date 133 of the 137 identified properties have been acquired. The project is ongoing with \$1,365,599 being disbursed and the remaining \$196,376 expected to be needed in the next two years. CRA is in the process of determining whether or the four remaining parcels will be exchanged for others that best meet the needs for the Economic Opportunity Act and the education and medical funding and strategy. As a result, consent to exchange the properties based on this funding and strategy is being requested. CRA is also requesting the ability to combine the Mixed Site Acquisition (P20265) with the Cooper Plaza Acquisition (P20263), as it will allow CRA to aggregate these projects into blocks that can be more easily developed.

The most recent disbursement under this grant was for \$500K for the Rutgers/Cooper Joint Board to acquire a property to be sold to the medical school (Rowan/Rutgers Joint Board). When this property is sold later this year, CRA will be required to repay \$250K to NJEDA. This payment will go back to the acquisition fund and CRA will acquire additional properties in the Lanning Square redevelopment area to support land assembly efforts of the education and medical institutions.

ERB has previously approved several extensions of the term of this grant with the final approved extension being June 30, 2015.

Requested Action:

Consent to a maturity extension of the grant maturity date to June 30, 2016 and a change in project scope as outlined above.

7. Cooper Plaza Acquisition – P20263

On March 28, 2005, the Members approved a \$1,532,950 recoverable infrastructure grant to cover the acquisition of 161 vacant lots and buildings within the Cooper Plaza neighborhood in the City of Camden.

To date, 121 of the 161 identified properties have been acquired. The project is ongoing with \$757,606 being disbursed and the \$775,344 remaining expected to be needed in the next two years.

CRA is also requesting the ability to combine the Cooper Plaza Acquisition (P20263) with the Mixed Site Acquisition (P20265), as it will allow CRA to aggregate these projects into blocks that can be more easily developed and continue to pursue the 39 remaining properties.

Members have previously approved several extensions of the term of this grant with the final approved extension being June 30, 2015.

Requested Action:

Consent to a maturity extension of the grant maturity date to June 30, 2016 and a change in project scope as outlined above.

8. Campbell Soup Expansion/Utility Relocation – P18198

On April 24, 2007, the Members approved a \$2,300,000 non-recoverable infrastructure grant to the CRA to make critical infrastructure improvements necessary for the creation of a modern office and research complex surrounding the Campbell Soup Expansion and pre-development activities with funds provided from the Demolition and Redevelopment Financing Fund.

This project is now complete with a total of \$2,215,141 being disbursed. The remaining \$84,859 in undisbursed funding is not needed and the commitment will be cancelled.

Project	Original Approval	Outstanding	Request	New Maturity
Tire & Battery Remediation – P20266	\$700,000	\$253,591	Maturity extension for \$200,000 for 12 months; cancel \$246,409 in undisbursed funding	3/31/2016
Building 8/Radio Lofts – P17493	\$1,997,716	\$1,682,687	Maturity extension of 12 months	3/31/2016
Central Waterfront Housing & Temporary Parking – P16137	\$5,000,000	\$4,916,423	Maturity extension of 12 months	6/30/2016
Neighborhood & Redevelopment Planning Grant I	\$723,947	\$599,369	Maturity extension of 12 months; change in project scope to tie funding to more specific neighborhood projects; combine with Planning Grant Phase II	9/30/2016
Planning Grant Phase II - P16904	\$445,050	\$190,500	Maturity extension of 15 months to match maturity of Planning Grant Phase I; change in scope to align funding with specific neighborhood projects, limited scope redevelopment, and projects tied to NJEDA incentives; combine with Planning Grant Phase I	9/30/2016
Mixed Site Acquisition – P20265	\$1,561,975	\$1,365,599	Maturity extension of 12 months; change in project scope to combine with Cooper Plaza Acquisition to aggregate both projects into easier to develop blocks	6/30/2016
Cooper Plaza Acquisition – P20263	\$1,532,950	\$757,606	Maturity extension of 12 months; change in project scope to combine with Mixed Acquisition to aggregate both projects into easier to develop blocks	6/30/2016
Campbell Soup Expansion/Utility Relocation – P18198	\$2,300,000	\$2,215,141	Project complete; remaining \$84,859 in undisbursed funding to be canceled	N/A

9. Coopers Hill Housing Development, LLC – P20891

On March 23, 2008, the Members approved a \$3,854,260 recoverable infrastructure grant to Coopers Hill Housing Development, LLC (“CHHD”), to be developed by M&M Development, LLC, for a housing development project consisting of 100 units; 84 market rate housing units, with the remaining 16 affordable housing units.

The original plan included three phases. Phases IA and IB contain 63 units (53 market rate units and 10 affordable units). Phase II to contain 37 new townhomes (31 market rate units and 6 affordable units). Phase IA consisted of 25 units, all of which are complete. To date, 18 have been sold and the remaining 7 are for sale.

Phase IB has been completed without the use of ERB grant funding as the project received HUD grant funding through the Neighborhood Stabilization Program 2 for this phase of the project.

Phase II never occurred as planned as the developer was not able to obtain site plan approval. As such, a new property was identified to replace the original site. CHHD has requested approval for a change in project scope, to include the purchase of the Pierre Building to replace the original project site for this phase. The Pierre Building is a 6-story apartment building, located at 306 Cooper Street in the City of Camden. When completed, this building will contain 29 rental units

This project is ongoing with \$839,809 being disbursed, and the remaining \$2,744,451 expected to be needed to complete the project over the next eight years. The grant funding expiration date for this project is August 1, 2023. Total project funding also includes a request for ERG grant and HMFA subsidies, with the ERG grant approval contingent on HMFA financing approvals.

Requested Action:

Consent to a change in project scope as outlined above, subject to CHHD obtaining additional financing in the form of a Residential ERG, a Historic Tax Credit, and a Low Income Tax Credit from HMFA by June 1, 2016.

10. Cooper’s Ferry Partnership (Former Prison Site) – P38122

On May 1, 2013, the Members approved a \$750,000 non-recoverable planning grant to the Cooper’s Ferry Partnership, Inc. to fund the costs associated with the development of preliminary engineering and final design work for road reconstruction, traffic improvement and waterfront park and streetscape improvement on and near to the former Riverfront State Prison site located on the waterfront in North Camden.

The road reconstruction and traffic improvement projects took longer than expected but are scheduled to be completed in May 2015. However, the park and streetscape project was temporarily put on hold and eventually scaled down. Cooper’s Ferry is now in the process of completing new design plans for the park and streetscape project with an expected completion date of April 2016.

Requested Action:

Consent to a grant maturity extension to April 30, 2016 for the unfunded balance of \$387,541.

11. Rowan University – P37597

On October 23, 2012, the Members approved a \$5,100,000 non-recoverable grant under the Higher Education and Regional Health Care Development Fund to fund a portion of the construction and renovation costs associated with the adaptive re-use of the former First Camden National Bank & Trust Building. This funding allowed Rowan to expand its campus and academic programs and services in Downtown Camden.

This project is now complete with a total of \$4,656,448 being disbursed. A final disbursement of a maximum of \$95,000 is expected. The greater of \$348,552, or the amount remaining after the final disbursement, is unneeded and will be cancelled.

12. Community Loan Fund of New Jersey (POWER) – P35126

On February 15, 2011, the Members approved a \$500,000 non-recoverable infrastructure grant to help fund structural improvements involved with code violations and safety issues discovered by POWER, an energy efficiency retrofit program for homes and businesses in the City of Camden. Camden POWER exists as a partnership between City of Camden, Camden County and New Jersey Board of Public Utilities, with essential assistance from New Jersey Housing Mortgage & Finance Agency, New Jersey Economic Development Authority, Community Loan Fund of New Jersey, and Cooper's Ferry Development Association.

A total of \$333,332 was disbursed with \$166,668 remaining unfunded at maturity. CLFNJ intends to continue providing funding to small businesses and non-profits for energy efficiency and life safety improvements because there is no other fund available for this purpose. The ERB grant maturity date was previously extended from May 2013 to December 31, 2013.

Requested Action:

Consent to a grant maturity extension to December 30, 2015 for the unfunded balance of \$166,668.

13. Parkside Business & Community In Partnership – P16433

On May 11, 2005, the Members approved a \$1,000,000 non-recoverable infrastructure grant to finance the renovation of 29 market-rate housing units, which is part of a 40-unit mixed income homeownership project, located in a Neighborhood Opportunity Area in the City of Camden.

Requested Action:

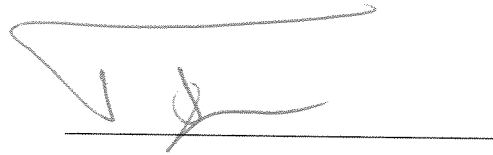
The ERB grant maturity date was December 31, 2013. A total of \$650,000 was disbursed with \$350,000 remaining unfunded at maturity. This grant was made in conjunction with NJHMFA, which withdrew its commitment as the projects were not proceeding. Given the NJHMFA withdraw, the grant already maturing, and the last disbursement being made in 2013, it is recommended that the grant maturity should not be extended, and the remaining \$350,000 in undisbursed funding commitment be cancelled.

Project	Original Approval	Outstanding	Request	New Maturity
Coopers Hill Housing Development, LLC – P20891	\$3,854,260	\$839,809	Change in project scope to include the purchase of the Pierre Building	08/01/2023 (no change)
Cooper's Ferry Partnership (Former Prison Site) – P38122	\$750,000	\$362,458	Maturity extension of 22 months from current maturity of June 30, 2014, to complete the park and streetscape project	4/30/2016
Rowan University – P37597	\$5,100,000	\$4,656,448	Project complete; final disbursement of a maximum of \$95,000 expected; greater of \$348,552, or the amount remaining after the final disbursement, to be cancelled	N/A
Community Loan Fund of New Jersey (POWER) – P35126	\$500,000	\$333,332	Maturity extension of 24 months from current maturity of 12/31/2013	12/31/2015
Parkside Business & Community In Partnership – P16433	\$1,000,000	\$650,000	Grant maturity should not be extended from current maturity date of 12/31/2013; remaining \$350,000 in undisbursed funding to be canceled as this grant was made in conjunction with NJFMS which withdrew its commitment	N/A

Recommendation

Staff has reviewed the requests for all of the projects for consistency with the Municipal Rehabilitation and Recovery Act, P.L. 2002 C. 43 and the Strategic Revitalization Plan, adopted by the Board at its June 20, 2003 meeting, and affirms that the projects meet the eligibility statutory requirements to enhance and revitalize the City of Camden.

The Members of the Economic Recovery Board approved the amendments and modifications on May 29, 2015, with the recommendation of NJEDA to approve the same. As such, the Members of the Authority are asked to approve the modifications and amendments.



Prepared by: Heather M. O'Connell
Mansi D. Naik



NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

MEMORANDUM

TO: Members of the Board

FROM: Timothy J. Lizura, President and Chief Operating Officer

DATE: June 9, 2015

SUBJECT: Rutgers, The State University of New Jersey
Camden, NJ
\$1,235,617 ERB Loan
P16526

Request:

The members of the Authority are asked to approve the release the note, mortgage and other supporting documents for the subject loan, and write the ERB loan off without recourse, to support the transfer of Campbell's Field stadium from Rutgers University to the Camden County Improvement Authority ("CCIA"). This transfer is integral to keeping the facility open for both the current season and to support its long term operation in Camden.

Background:

In 2000 the EDA approved \$7 million in NJEDA conduit taxable and tax-exempt direct purchase bonds with Santander Bank, (formerly Sovereign Bank) and a \$2 million LDFF Direct Loan to supplement a \$6.5 million loan from the Delaware River Port Authority ("DRPA"), \$2 million from Rutgers University and \$3.7 million in equity to finance the 6,425 seat Campbell's Field baseball stadium.

In 2004 new owners attempted to improve attendance and operations, but sizeable debt incurred at inception, ongoing maintenance costs and high rent continued to impair ongoing operations. In 2005, in an effort to keep the facility operating, EDA extended a payment moratorium on its LDFF loan and The ERB and EDA Boards approved a new \$1,235,617 loan to Rutgers University to fund stadium improvements.

In subsequent years the project continued to report losses and in December 2012, the project defaulted on its bond payments, resulting in the bank initiating legal action which has been ongoing. In April 2014, the loan was fully reserved and written off with recourse as no recovery was expected due to payment default on the senior debt, the significant amount of senior debt and the special purpose type facility as collateral.

CCIA recently agreed to purchase the stadium from Rutgers for \$3.5 million. Under its proposal, CCIA will issue bonds and use the funds to retire Santander's debt. CCIA will enter into a new one year lease with the Camden Riversharks that will allow the team to continue to play at

Campbell Field for the current season. CCIA has requested junior lenders, including the ERB, to release their notes and mortgages to facilitate the transfer.

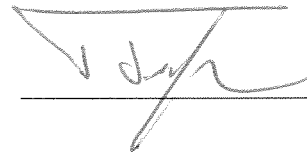
EDA and DRPA are also junior lenders in 2nd and 3rd lien position respectively on the collateral and as such will each receive a \$.25 ticket surcharge over the next 15 years. There will be no ticket surcharge available for the ERB loan due to its further subordinate 4th lien which puts it in a less well secured position.

Additionally, on April 14, 2015 the EDA Board approved settling the \$2,000,000 EDA Direct LDFP loan on this project in return for a 15 year \$.25 ticket surcharge.

Recommendation:

Approve the release of the note, mortgage and other supporting documents, and write off the subject loan without recourse. Approval will support the comprehensive restructuring of the senior debt on the stadium which is necessary to effectuate the transfer of the facility from Rutgers to CCIA, and it will serve to keep the stadium operational for the current season while the CCIA evaluates long term prospects for the facility.

The members of the Camden Economic Recovery Board approved this action on May 29, 2015 with the recommendation to the NJEDA to also approve it. As such, the Members of the Authority are asked to approve the release the note, mortgage and other supporting documents, and write off the subject loan without recourse.

A handwritten signature in dark ink, appearing to be "J. Maticka", is written over a horizontal line.

Prepared by: Jon Maticka



MEMORANDUM

TO: Members of the Board

FROM: Timothy J. Lizura, President and Chief Operating Officer

DATE: June 9, 2015

SUBJECT: Settlement Music School of Philadelphia, Inc. (the "School" or "SMS")
Camden, NJ
P15511

Request:

The Members are requested to approve the release of EDA's mortgage without repayment of the grant to facilitate the sale of the property and relocation of the School to appropriately-sized facilities at The Creative Arts Morgan Village Academy located at 990 Morgan Blvd, Camden.

Background:

In September 2006, Settlement Music School (SMS), a Philadelphia-based community music school, purchased a 16,000 sq.ft. facility located at 531-535 Market Street, Camden to serve as the Camden School of Musical Arts. The project was funded by a \$1,000,000 ERB grant with funds from the Downtown Revitalization and Recovery Fund to leverage \$3,000,000 from the Casino Reinvestment Development Authority, Delaware River Port Authority and private sources to facilitate this transaction. The ERB recoverable grant is secured by a first mortgage on the subject property, and self-amortizes by 10% after each year of operations.

Since inception, SMS has subsidized the Camden operation by approximately \$250,000 annually due to modest enrollment of approximately 150 students in a facility that can accommodate 1000 students. The disproportionate enrollment to the size of the facility has historically contributed to a significant portion of the annual operating loss.

In an effort to eliminate the ongoing losses from operating the large facility, SMS has decided to sell the building and relocate to The Creative Arts Morgan Village Academy (CAMVA) at 990 Morgan Boulevard within the city. CAMVA will allow SMS use of its facility in exchange for allowing its students to participate in SMS's ballet classes, individual music instruction and group instrumental instruction. Additionally, CAMVA students will have the benefit of being able to apply for financial aid provided by SMS through this affiliation. The school will also continue its onsite teaching programs at Urban Promise Charter School, and is looking to create a similar program with Masters Charter School.

At present, SMS has fulfilled 8 ½ years of the 10 year grant requirement and has requested Members' consent to the early release of its mortgage without repayment of the residual amount due on the grant (approximately \$125,000) and allow them to fulfill the remainder of grant term at the new Camden location. SMS is under contract to sell the property for \$1.5 million and proceeds from the sale will be used to pay a portion of \$2.3 million in debt maturing next year. While the sale of this property is a change from the original purpose of the grant the School has committed to maintain its presence in Camden and continue to serve the community for the remainder of the grant term (ending September 2016). Members consent will allow them to mitigate unsustainable losses from operations while continuing operations in Camden.

Proposed buyer of the property, Volunteers of America of Delaware Valley (VOADV), is expected to fully utilize the building and bring 75 jobs to Camden.

Recommendation:

On May 29, 2015, The Economic Recovery Board of Camden approved the release of EDA's mortgage without repayment of the residual portion of the grant award due.

The Members' consent to same is recommended to allow SMS to continue providing subsidized musical education in Camden and allow the VOADV to relocate to the property which will create 75 new jobs in the City.

A handwritten signature in black ink, appearing to be 'V J / ~', is written over a horizontal line.

Prepared by: Mansi Naik

OFFICE OF RECOVERY

STRONGER NJ GRANT PROGRAM (APPEALS)



NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

MEMORANDUM

TO: Members of the Authority

FROM: Melissa Orsen
Chief Executive Officer

DATE: June 9, 2015

SUBJECT: Stronger NJ Business Grant Program Appeal – Wholesale Products and Entertainment LLC and Office Dimensions Inc.

Pursuant to the appeal process approved by the Board at the June 10, 2014 Board meeting, applicants to the Stronger NJ Business Grant program may challenge the EDA's decisions by submitting in writing to the EDA no later than 30 calendar days from the date of the denial, an explanation as to how the applicant has met the program criteria. A Hearing Officer is assigned to each project to provide an independent review of the appeal.

The Hearing Officer's review includes reviewing the appeal letter, the application and file, as well as speaking directly with the applicant and relevant Office of Recovery staff. The applicant has been sent the Hearing Officer's report in advance of the Board Meeting. They have been given an opportunity to reach out directly to the Hearing Officer to discuss the decision, and have been notified of the date and time of the Board Meeting.

At this meeting, the Board is being asked to consider two appeals: Wholesale Products and Entertainment LLC and Office Dimensions Inc. Attached to this memo you will find the Hearing Officer's recommendation, the Hearing Officer's letter to the applicant, the declination letter and the applicant's appeal. I have reviewed the attached and I concur with the recommendation that the declinations under the Stronger NJ Business Grant Program for Wholesale Products and Entertainment LLC and Office Dimensions Inc.

Melissa Orsen

attachments



MEMORANDUM

TO: Melissa Orsen, Chief Executive Officer
Members of the Authority

FROM: Dina Khmelnitsky
Kara Kopach
Hearing Officers

DATE: June 9, 2015

SUBJECT: Stronger NJ Business Grant Program Appeals
Wholesale Products and Entertainment LLC – 58270
Office Dimensions Inc. – 54498

Request:

The Members are asked to approve the Hearing Officers' recommendations to uphold the declination of the Stronger NJ Business Grant application for Wholesale Products and Entertainment LLC and Office Dimensions Inc. Pursuant to the appeal process approved by the Board at the April 30, 2013 Special Board meeting, and revised at the June 10, 2014 Board Meeting, applicants to the Stronger NJ Business Grant program may challenge the EDA's decisions by submitting in writing to the EDA no later than 30 calendar days from the date of the denial, an explanation as to how the applicant has met the program criteria. A Hearing Officer is assigned by the CEO to each project to provide an independent review of the appeal. Dina Khmelnitsky and Kara Kopach have fulfilled the role of Hearing Officer to review the following appeal and have completed the review with legal guidance from the Attorney General's Office.

Each appeal has been reviewed and a letter has been sent to each applicant with the Hearing Officer's recommendations. The applicants were notified in the letter that they have the opportunity to provide comments or exceptions directly to the Hearing Officer. Letters are attached to this memo.

Based on the review of the appeals submitted by the applicants and the analysis prepared by the initial review team from the EDA, the Hearing Officers recommend the following:

Business Name	Reason for Decline	Discussion
Wholesale Products and Entertainment LLC	Business is home-based without a separate commercial entrance.	Applicant's business was home-based and local zoning ordinances do not allow for a home-occupied business to have a separate commercial entrance nor to receive customers in the home.
Office Dimensions Inc.	Applicant is a home-based business not zoned appropriately for the applicant's primary business activity AND the business has been debarred.	Applicant's business was home-based and local zoning ordinances do not allow for the business to receive customers at the home. Additionally, the business is debarred until November 5, 2016.

Recommendation:

As a result of careful consideration of the above appeal in consultation with the Attorney General's Office, the recommendation of the Hearing Officers is to uphold the declination of the Stronger NJ Grant application for Wholesale Products and Entertainment LLC and Office Dimensions Inc.

Prepared by: Dina Khmelnsky

STRONGER NJ BUSINESS LOAN PROGRAM

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY - STRONGER NJ BUSINESS LOAN PROGRAM PROGRAM**

APPLICANT: The Dutchman's Brau Haus Inc

P40367

PROJECT USER(S): Same as applicant

* - indicates relation to applicant

PROJECT LOCATION: 2500 East Bay Ave

Stafford Township (N)

Ocean

GOVERNOR'S INITIATIVES: () Urban () Edison (X) Core () Clean Energy

APPLICANT BACKGROUND:

The Dutchman's Brau Haus Inc is a restaurant / bar located in Manahawkin N.J that has been in operations since 1952. The restaurant sits on foundation piles over the Manahawkin Bay and experienced the effects of the storm surge during SuperStorm Sandy. The Applicant is requesting a \$1,382,030 working capital loan to assist in its recovery.

APPROVAL REQUEST:

A \$1,382,030 working capital loan is requested under the Stronger NJ Business Loan Program.

FINANCING SUMMARY:

LENDER: NJEDA

AMOUNT OF LOAN: \$1,382,030

TERMS OF LOAN: 30 year term. 24 months of 0% interest followed by 336 months of interest payments based on the 5 year US Treasury rate. Rate reset at each 10 year anniversary. During the first 24 months of the loan no principal payments are due followed by 336 months of principal payments in an amount adequate to fully amortize the loan.

PROJECT COSTS:

Working capital	\$1,383,926
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TOTAL COSTS	<u>\$1,383,926</u>
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JOBS: At Application	<u>21</u> Within 2 years	<u>36</u> Maintained	<u>57</u> Construction	<u>0</u>
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DEVELOPMENT OFFICER: T. Trifeletti

APPROVAL OFFICER: S. Novak

ENERGY RESILIENCE BANK



MEMORANDUM

TO: Members of the Authority

FROM: Timothy Lizura
President and Chief Operating Officer

DATE: June 9, 2015

RE: Energy Resilience Bank (ERB)

Request:

The Members are requested to approve the First Amendment to the Subrecipient Agreement between the New Jersey Board of Public Utilities and the Authority relating to the operations of the Energy Resilience Bank ("ERB"), which is attached in substantially final form.

Background:

In July, 2014, the Members approved the creation of the Energy Resilience Bank proposed under the New Jersey Department of Community Affairs ("NJDCA"), Community Development Block Grant Disaster Recovery ("CDBG-DR"), Substantial Amendment for the Second Allocation of CDBG-DR Funds ("Second Action Plan", which was approved by the U.S. Department of Housing and Urban Development ("HUD") on May 30, 2014). The Second Action Plan provides \$200 million to create and maintain the ERB to address statewide energy resilience needs.

In order to implement the ERB, EDA executed a Subrecipient Agreement with the New Jersey Board of Public Utilities ("BPU") which established the roles and responsibilities for the administration of ERB. The Subrecipient Agreement contemplated providing financial assistance not only from HUD funds but also from BPU through Societal Benefits Charges Program Income ("SBC").

In Fall, 2014, both the Members and the BPU board approved the ERB Financing Program Guide and approved the Round 1 Water and Wastewater Treatment Facilities Program Guide. Since that time the ERB has built a strong pipeline of Water and Wastewater projects and conducted significant research and market analysis to identify the need for resilient energy assets and financing incentives at critical facilities in the State.

At this time, projects utilizing SBC funding are not contemplated, thus requiring less direct BPU input. As a result, NJEDA and NJBPU intend to modify the relationship as it relates to governing ERB to increase operational efficiency and to allow for timelier responses to market needs for financing resilient energy infrastructure at critical facilities in the State. EDA and BPU agree that a simplification of the administrative structure for ERB is needed and that the ERB initiative will be under the governance structure of the EDA, as detailed in the First Amendment. BPU will continue as a partner and will provide technical and regulatory consulting support to ERB. BPU will be reimbursed through CDBG-DR funds for their eligible administrative expenses and program/activity delivery costs according to an agreed upon annual budget.

Recommendation:

The Members are requested to approve this First Amendment to the Subrecipient Agreement between BPU and the Authority related to the operations of ERB and which details the general roles and responsibilities of the BPU in supporting the ERB initiative. The document attached is in substantially final form. The Members are requested to authorize execution by the Chief Executive Officer or President/COO of this document, subject to final review by the Attorney General's Office. This amendment is also subject to the approval of the BPU board.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

Attached:

First Amendment to the Subrecipient Agreement (SRA) between NJEDA and NJBPU

Prepared by: Mitch Carpen/Liza Nolan

FIRST AMENDMENT TO SUBRECIPIENT AGREEMENT
BETWEEN
THE BOARD OF PUBLIC UTILITIES AND
THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

IMPLEMENTING GRANT UNDER THE COMMUNITY DEVELOPMENT BLOCK
GRANT DISASTER RECOVERY PROGRAM

This First Amendment (“Amendment”) to the Subrecipient Agreement originally entered into on the 19th day of August, 2014 (“Original Agreement”) is made and entered into by and between the NEW JERSEY BOARD OF PUBLIC UTILITIES (“BPU”) and the NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY (“EDA”) for the purpose of revising the duties of the BPU in the Energy Resilience Bank (ERB) program.

The EDA and the BPU may sometimes hereinafter be collectively referred to as the “Parties” and individually as a “Party,” both instrumentalities of the State of New Jersey (the “State”).

PREAMBLES

WHEREAS, the New Jersey Department of Community Affairs (“DCA”) and the EDA entered into a Subrecipient Agreement effective May 21, 2013 (such agreement as amended, “the EDA-DCA Subrecipient Agreement”) which made funds available to the EDA for purposes, including, inter alia, development and maintenance of the New Jersey Energy Resilience Bank (the “ERB”) to address Statewide energy resilience needs, as defined in the State’s CDBG-DR Action Plan Amendment Number 7; and

WHEREAS, the EDA and BPU previously entered into the Original Agreement for the purpose of jointly administering the ERB;

WHEREAS, the EDA and the BPU intend to modify that relationship to allow for ERB administration by the EDA with only technical assistance from the BPU, limited to those duties set forth herein, and no use of Societal Benefits Charge (“SBC”) funding.

NOW THEREFORE, in consideration of the promises and the mutual representations, warranties and covenants herein contained, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby amend the Original Agreement as follows. The Original Agreement, as hereby amended is hereinafter referred to as the “Agreement”.

I. SAVINGS CLAUSE

All provisions of the Original Agreement are hereby removed and replaced by the sections contained in this Amendment; except for the following Sections which shall continue to be in effect: Sections II. (B), “Implementation of Agreement”; the first paragraph of Section IV. G, “Eligible Cost”; Section V, “Payment Process”, with the reference to Section III of the Original Agreement therein to be read to refer to Section III of this Amendment; Section VI.

B, “Termination/Suspension for Cause; Section VI. C, “Termination for Convenience”; Section VI. D, “Termination Due to Unavailable Funding”; Section VI. E, “Obligations Governing Use of CDBG Funds Survive Termination” except for subpart (4); Section VI. F, “Payment Upon Termination”; all sections of VII. A, “Administrative Requirements – Documentation and Recordkeeping”, except for 3, “Close-outs”; all sections of IX, “General Conditions”, except that the second paragraph of F. “Amendments” shall be revised to read “Any change to ERB program guides, guidelines and/or protocols will not require an amendment to this Agreement”; Section X, “No Third Party Beneficiary”; and all Sections of XI, “Miscellaneous”, except for Sections XI A and Section XI B with the understanding that terms defined in the Preambles to the Original Agreement shall continue except as modified by this Amendment and with the understanding that the ERB is no longer jointly operated by EDA and BPU.

All capitalized words not otherwise defined herein shall have the meaning ascribed to them in the EDA-DCA Subrecipient Agreement (Appendix A).

II. SCOPE OF AMENDMENT

The purpose of this Amendment is to provide for terms under which BPU shall provide technical assistance to the EDA in the implementation of the ERB program. The BPU will no longer approve or reject applications or process appeals under the Challenge Process, which will be the sole responsibilities of the EDA. The Challenge Process approved by the Board on October 27, 2014, will no longer be applicable.

III. THE BUDGET

The EDA agrees to allow DCA to reimburse the BPU’s Administrative Expenses and Activity Delivery Costs allocable to the ERB according to the agreed upon not-to-exceed annual budget attached hereto as Exhibit E, provided the following conditions are met:

1. The ERB Executive Director, or the Executive Director’s designee, will review and approve timesheets for the ERB staff to ensure that they are in compliance with HUD requirements and APA Number 7 pertaining to the ERB. The BPU time sheets and other supporting data will be provided to EDA in a format that is compatible with inputting the information into the Sandy Integrated Recovery Operations and Management System (“SIROMS”); and
2. All requests for reimbursement sought by BPU shall be properly allocable to Administrative Expenses and Activity Delivery Costs incurred by BPU in connection with its implementation of the ERB program as set forth in the annual budget. The reimbursement process will be agreed upon and finalized by both parties within 30 days of implementation of this Amendment.
3. All BPU costs incurred prior to the execution of this Amendment shall be paid according to the procedures set forth in the Original Agreement and the newly established reimbursement process.

IV. DUTIES OF THE BPU

As requested by EDA, BPU will advise EDA in the following areas:

1. Assist the EDA with developing and revising standard application forms (including intake and full applications forms).
2. Assist the EDA with initial technical program eligibility criteria, guidelines and/or protocols, and project scoring methodologies related to technical issues. In addition, BPU will work with EDA on proposed changes to the foregoing, as necessary, subject to EDA Board approval(s), if required.
3. Assist the EDA in establishing the technical and operational conditions to be met by facilities in order to receive (where applicable) any loan forgiveness.
4. Assist the EDA with developing project-specific technical requirements and/or conditions which must be agreed to and/or satisfied (as applicable) as pre-conditions to closing an ERB financing with a successful applicant.
5. Assist the EDA with Marketing and Outreach services upon request of EDA
6. Assist the EDA in review of applications on the basis of technical feasibility, criticality and resiliency. This process shall include but shall not be limited to:

Step 1: Screening Evaluation

A 1-day site visit/basic screening study for sites that include the possibility of applying Combined Heat and Power (“CHP”) (this could be done with the help of the Department of Energy CHP Technical Assistance Partnerships initiative, which is focused on CHP, district energy and waste heat to power applications only). This step is a proactive engagement at the site with the applicant and their engineering team to properly review the proposed project and, if necessary, orient the applicant towards a viable solution while learning more about the site and its needs.

Step 2: Level I Assessment

A Level I assessment would involve development/review of the existing and future electric and thermal loads, proposed on-site energy production system design review, resiliency design review, budget costing, economic evaluation and a review of the regulatory and environmental impacts. This is a detailed preliminary technical review of the proposed resiliency solution at a high level that also provides the data needed for Step 3. The process would incorporate discussions with the proposing team to develop a consensus around their proposed resiliency solution that would meet the Bank’s underwriting standards.

Step 3: ERB Internal Assessment using Rutgers Center for Energy, Economic and Environmental Policy (“CEEPP”) Cost Benefit Ratio (“CBR”) Calculator

Once there is agreement with the site on the technical approach and outcomes from Step 2, the data would be run through the Rutgers CEEPP CBR calculator or similar program analysis and the results together with Level I analysis would be reviewed with the EDA.

7. Provide such other technical assistance as may be requested from time to time by EDA and agreed to by the BPU.
8. BPU’s scope of work for each task assigned by the EDA will be agreed upon by both parties and the BPU will provide the EDA with a “Tasking document” listing the work to be performed, the estimated timeline for completion, and the estimated work hours and costs associated with the task, which will require approval by the EDA prior to any work commencing.
9. The Parties acknowledge that the BPU may from time to time use subcontractors, including but not limited to Rutgers CEEPP and New Jersey Institute of Technology to assist in the performance of the BPU’s technical duties.

V. ASSURANCES

BPU shall be responsible for undertaking its duties hereunder in compliance with all applicable State and federal laws and regulations. It shall be BPU’s responsibility to require that all of its Sub-subrecipients, grantees, borrowers, Contractors, and all tiers of their subcontractors, adhere to all applicable State and federal laws and regulations, and to conduct all necessary monitoring for such compliance. As to laws and regulations which apply to the use of CDBG funds, BPU is concurrently executing the Statement of Assurances, attached hereto as Appendix B, which shall be deemed to be requirements of this Agreement to the extent that they are applicable. BPU shall provide to the EDA guidance as requested on the applicable laws and regulations governing a particular construction project under consideration for ERB funding.

BPU agrees to comply with all applicable federal CDBG-DR statutes and regulations as more fully detailed in Appendix B, subject to waivers cited in the Federal Register / Vol. 78, No. 43 / Tuesday, March 5, 2013, Department of Housing and Urban Development, [Docket No. FR-5696-N-01] Allocations, Common Application, Waivers, and Alternative Requirements for Grantees Receiving Community Development Block Grant (CDBG) Disaster Recovery Funds in Response to Hurricane Sandy and which hereinafter may be granted by HUD.

VI. COOPERATION WITH HUD AND DCA

The BPU hereby binds itself, certifies, and assures that it will comply with all federal, State, and local regulations, policies, guidelines and requirements, as they relate to the application, in acceptance and use of State and federal funds. The Parties expressly

acknowledge that the matters which are the subject of this Agreement are under the CDBG Disaster Recovery Program administered by HUD, which by its emergency nature is subject to ongoing modification and clarifications. The Parties' obligations under this Agreement are subject to compliance with applicable statutes and regulations of the CDBG program, as modified by exceptions and waivers previously granted and which may hereinafter be granted by HUD. BPU and EDA agree that in connection with their respective rights and obligations under the Agreement, they shall cooperate with HUD and DCA regarding the administration and audit of the ERB, including compliance with various operating and reporting procedures which may hereinafter be promulgated by the DCA and/or HUD.

VII. CONTRACT MONITOR/PERFORMANCE MEASURES

The contract monitor for the EDA on this Agreement is the Chief Executive Officer of the EDA, or the CEO's designee. The performance measures for this Agreement shall include the successful performance and completion of BPU's obligations as provided in this Agreement and any attachments, as well as all guidelines for the ERB. BPU shall submit to the EDA on a schedule and dates to be provided by the EDA, a report of project progress and beneficiary data in a format to be provided by the EDA.

To the extent applicable under this Amendment, reporting requirements may require the BPU to obtain data from third parties (i.e. persons that receive Grant Funds or other beneficiaries of the program(s), such as Sub-subrecipients or vendors described under Section VIII, paragraph 9 of this Amendment, grantees, and/or borrowers funded under this Agreement, tenants/operators/users of facilities or equipment acquired or improved with Grant Funds provided under this Agreement and with whom the BPU may be involved in the performance of its duties hereunder). It shall be the BPU's obligation to implement any contractual arrangements it may need for use of, and access to, such data from these third parties.

BPU must, in advance of signing subcontracts related to this Agreement, ensure that Sub-subrecipients, developers, Contractors and/or other third party entities have in place adequate financial controls and procurement processes and have established procedures to prevent any duplication of benefits as defined by section 312 of the Stafford Act.

Pursuant to HUD's waiver of 24 CFR 570.492, EDA and/or DCA shall make reviews and audits, including onsite reviews of any Sub-subrecipients, designated public agencies, and units of local government as may be needed to meet the requirements of 42 U.S.C. 5304(e)(2), as amended. In the event of noncompliance, the EDA and/or DCA shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences, and prevent a recurrence.

VIII. CONFLICT OF INTEREST

Except for approved eligible administrative and personnel costs, none of the BPU's designees, agents, members, officers, employees, consultants or members of its

governing body, or anyone who is in a position to participate in a decision-making process or gain inside information with regard to the Project, has or shall have any interest, direct or indirect, in any contract or subcontract or the proceeds thereof for work performed in connection with the Project or benefit there from, which is part of this Agreement at any time during or after such person's tenure unless all procedures for an exception have been documented and submitted in writing to the EDA and the EDA has approved such exception.

The procedures for requesting, documenting, and submitting a request for an exception from the Conflict of Interest provisions shall include the applicable procedures delineated in 24 CFR 570.489(h)(4) and in the New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq. and Executive Order No. 189. This Conflict of Interest provision shall be in addition to the requirements in the "Common Rule," 24 CFR Part 84, 24 CFR Part 85, 24 CFR 570.611, 24 CFR 570.489(h).

The BPU agrees to abide by the provisions of 24 CFR 84.42 and 24 CFR 570.611, which include (but are not limited to) the following:

1. The BPU shall maintain the previously executed written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by federal funds.
2. No employee, officer or agent of the BPU shall participate in the selection, or in the award, or administration of, a contract supported by federal funds if a conflict of interest, real or apparent, would be involved.
3. No covered persons who exercise or have exercised any functions or responsibilities with respect to assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the assisted activity, or with respect to the proceeds from the assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the DCA, BPU, EDA, or any designated public agency.
4. BPU will establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

IX. PROCUREMENT

Subrecipient shall substantially comply with the current GRANTEE practice, which is to comply with the State procurement laws and regulations that were certified by HUD as equivalent to 24 CFR Part 85.36, and the State regulations and requirements regarding procurement, including but not limited to Executive Order 125 (Christie 2013) in executing its duties under this Amendment. This is in addition to whatever State laws may apply to procurement by the Subrecipient. Notwithstanding the above, the Parties acknowledge that, unless otherwise agreed to, the State Department of the Treasury, Division of Purchase and Property, shall be responsible for all procurement activities associated with the Program, including but not limited to procurement of a marketing firm to create and implement a marketing campaign and procurement of one or more consulting entities to assist with business process services for administering the Program.

X. TERM OF AGREEMENT

This Agreement shall be deemed effective upon execution by both Parties and the service on the EDA of a BPU Board Order approving execution of the Agreement. The Agreement shall continue in full force until such time EDA no longer exercises any supervision or control over any of the Grant Funds, including CDBG Program Income, unless terminated or amended prior to such time in accordance with the terms and conditions of this Agreement.

XI. COMPLIANCE PROVISIONS

A. Use and Reversion of Assets

The use and disposition of immovable property, equipment and remaining Grant Funds under this Agreement shall be in compliance with all CDBG regulations, which include but are not limited to the following:

1. BPU shall transfer to the EDA any Grant Funds and any accounts receivable attributable to the use of Grant Funds on hand and any accounts receivable attributable to the use of Grant Funds under this Agreement at the time of expiration, cancellation, or termination.
2. In all cases in which equipment acquired, in whole or in part, with Grant Funds is sold, the proceeds shall be reviewed to determine if there is Program Income, as defined in 2 CFR Part 200.80. Equipment not needed by BPU for activities under this Agreement shall be (a) transferred to EDA for the CDBG program or (b) retained by BPU after compensating EDA an amount equal to the current fair market value of the equipment less the percentage of any non-CDBG funds used to acquire the equipment.

The Parties have executed and delivered this Agreement on the date set forth next to their respective signatures below. By the signatures, the Parties execute this Agreement and confirm that they are mutually bound by and fully authorized and empowered to enter into and bind their organization to all provisions contained herein.

**NEW JERSEY ECONOMIC DEVELOPMENT
AUTHORITY**

 Name: Melissa Orsen
 Title: Chief Executive Officer
 Date: _____

BOARD OF PUBLIC UTILITIES

 Name: Richard S. Mroz
 Title: President
 Date: _____

The execution of this Agreement by the Parties above has been received and acknowledged by the signature below:

DEPARTMENT OF COMMUNITY AFFAIRS

 Name: Charles Richman
 Title: Acting Commissioner
 Date: _____

**APPENDIX A
EDA-DCA SUBRECIPIENT AGREEMENT**

Amendment #1

**STATE OF NEW JERSEY
DEPARTMENT OF COMMUNITY AFFAIRS**

**INTERAGENCY AGREEMENT
WITH THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

**IMPLEMENTING GRANT UNDER THE COMMUNITY DEVELOPMENT BLOCK
GRANT DISASTER RECOVERY ("CDBG-DR") PROGRAM**

This First Amendment to the Subrecipient Agreement (the "First Amendment") is made and entered into on this 8th day of August, 2014 by and between the NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS ("DCA"), and the STATE OF NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY ("EDA").

The DCA shall be referred to as ("GRANTEE"). GRANTEE and the EDA may sometimes hereinafter be collectively referred to as the "Parties" and individually as a "Party."

PREAMBLES

WHEREAS, GRANTEE and the EDA entered into a subrecipient agreement, effective May 21, 2013, (the "Agreement") which made available to EDA up to four hundred sixty million and 00/100 dollars (\$460,000,000.00) of CDBG-DR funds for the purpose of funding GRANTEE's activities under the Economic Revitalization Program; and

WHEREAS, Action Plan Amendment Number 4 to New Jersey's Initial Action Plan for the Utilization of CDBG-DR Funds in Response to Superstorm Sandy, which was approved by HUD on January 8, 2014, adjusted the funds made available to the EDA Grants/Forgivable Loans to Small Businesses Program to \$100,000,000; a transfer of \$160,000,000 from EDA to housing programs.

WHEREAS, a second allocation of CDBG-DR funds was appropriated to the State of New Jersey (the "State") for disaster recovery efforts from Superstorm Sandy in November 2013; and

WHEREAS, Action Plan Amendment Number 7 to New Jersey's Initial Action Plan for the Utilization of CDBG-DR Funds in Response to Superstorm Sandy, which was approved by HUD on May 30, 2014 provides for the use of funds from the second allocation by GRANTEE in the amount of: i) \$5,000,000 for the Tourism Marketing Campaign (Section 3.4.1), and ii) \$200,000,000 to create and maintain the New Jersey Energy Resilience Bank ("ERB") to address Statewide energy resilience needs (Section 3.5.2 of); and

WHEREAS, pursuant to Section VII (F) of the Agreement, the Parties are required to amend the Agreement to reflect the change in CDBG-DR funding allocated to the EDA and the incorporation of new activity under the EDA-administered Economic Revitalization Program. The amended total of CDBG-DR funds made available to EDA

Page 2
Amendment #1

reflected in this Amendment is up to five hundred five million and 00/100 dollars (\$505,000,000).

NOW, THEREFORE, in consideration of the promises and the mutual representations, warranties, and covenants herein contained, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree to amend the Agreement as follows:

I. Section I General Definitions. Economic Revitalization Program definition is revised to the following:

"Economic Revitalization Program", for purposes of this Agreement, means Section 4.3 of the Action Plan and shall also include the New Jersey Energy Resilience Bank set forth in Section 3.5.2 under Section 3.5 Infrastructure and the Tourism Marketing Campaign detailed within the guidelines of the Action Plan and updated in the ensuing Action Plan Amendment Number 7.

II. Section II (A). Grant Award, is deleted in its entirety and the following is substituted in lieu thereof:

A. Grant Award

Subject to the terms and conditions of this Agreement, the GRANTEE, as administrator of the CDBG-DR Program, shall make available to Subrecipient disaster recovery funds up to the gross amount of five hundred five million, and 00/100 (\$505,000,000) Dollars (the "Grant Funds") for the purpose of funding GRANTEE's activities under the Action Plan and subsequent amendments related to the Economic Revitalization Program (the "Program"). The Parties acknowledge that \$5 million of the above-referenced Grant Funds represent additional monies allocated to the EDA for its tourism marketing campaign; Subrecipient's receipt of this sum is contingent upon HUD's approval of the State's waiver request to increase by \$5 million the State's cap on using CDBG-DR monies for tourism. The Grant Funds must be expended by Subrecipient within two years of the date that HUD executes each grant agreement with GRANTEE for all or a portion of the Grant Funds, with final grant agreement to be executed on or by September 30, 2017, unless an extension is hereinafter granted in writing by HUD or as approved by GRANTEE. Subrecipient is required to ensure all contracts (with subrecipients, recipients, and Contractors) clearly stipulate the period of performance or the date of completion.

III. A new subsection II (D) 1 (e) shall be added and provide as follows:

e) Infrastructure - Subrecipient will facilitate the Programs defined in Section 3.5 of Amendment 7 to the Action Plan in order to best position the State to be prepared for future disasters by setting policies and standards aimed at realizing smart infrastructure investment, identifying resilience opportunities, and using technological innovation and mitigation designs to meet future challenges and hazards.

- IV. A new subsection II(D) 1 (f) shall be added and provide as follows:

(f) **New Jersey Energy Resilience Bank**—Subrecipient will provide technical and financial support, including but not limited to grants and low-interest loans, to critical facilities in the State to realize energy resilience projects or enhancements to existing energy infrastructure. GRANTEE acknowledges that the ERB program will be administered by the EDA in conjunction with the Board of Public Utilities (BPU) pursuant to the terms of a memorandum of understanding, dated as of the date hereof, which may be amended from time to time; however EDA remains solely responsible for all obligations contained within the Agreement as Subrecipient of CDBG-DR funds.

- V. Section II (D) 2 The Budget

- A. The first paragraph is deleted in its entirety and the following is substituted in lieu thereof:

Activity/Item	Maximum Amount
Tourism/Marketing	\$30,000,000
Grants/Forgivable Loans	\$100,000,000
Direct Loans	\$100,000,000
Neighborhood and Community Revitalization	\$75,000,000
New Jersey Energy Resilience Bank	\$200,000,000
TOTAL	\$505,000,000

The total budget of \$505,000,000 includes Administrative Expenses of up to \$2,525,000 and Activity Delivery Costs of up to \$75,750,000.

This reflects the changes contained in Action Plan Amendments 5 and 7.

- B. The following additional paragraph is added:

“The Parties may agree, in writing, to a revision of the Budget or a reallocation of funds between categories within the Budget without the need to amend this Agreement; provided however, that in no case shall any such revisions or reallocations exceed the total allocation under the Agreement.”

- C. “Administrative Expenses” - “\$2,300,000 (Two Million Three Hundred Thousand Dollars)” shall be deleted and “\$2,525,000 (Two Million Five Hundred Twenty Five Thousand Dollars)” shall be substituted in lieu thereof.
- D. “Activity Delivery Costs” - “\$69,000,000 (Sixty Nine Million Dollars)” shall be deleted and “\$75,750,000 (Seventy Five Million Seven Hundred Fifty Thousand Dollars)” shall be substituted in lieu thereof.

VI. Section II (D) 3 Performance Requirements

The following additional paragraph is added following the fourth bullet:

“Subrecipient will make best efforts to launch ERB in August 2014. Subrecipient intends to complete all ERB-related Activities of the Program, including 100% expenditure of ERB-allocated funds that have been drawn down no later than two years from the execution date of each Grant Agreement between GRANTEE and HUD, and it shall endeavor to assist as many individual qualifying facilities as is practicable given the Grant Fund allocation for ERB. Activity completion and expenditure requirements do not apply to Activities separately funded through the Subrecipient’s or GRANTEE’s receipt and expenditure of Program Income.

Subrecipient agrees to use best efforts to comply with intermediate benchmarks as follows:

- \$30 million obligated under a Grant Agreement between GRANTEE and HUD within 1 year of execution of this Agreement
- An additional \$40 million obligated under a Grant Agreement between GRANTEE and HUD within each 1 year anniversary of execution of this Agreement for the next 3 years
- An additional \$50 million obligated under a Grant Agreement between GRANTEE and HUD within the 5th anniversary of execution of this Agreement, unless such date is otherwise stipulated in writing by GRANTEE and HUD.

GRANTEE authorizes an extension of the dates contained in this section to reflect that all Action Plan 1 funds obligated under the Grant Agreement dated May 13, 2013, as amended, must be expended by May 13, 2015. The funds disbursed in subsequent tranches must be expended within 2 years of the date the funds are obligated by HUD to GRANTEE.”

VII. Section II(D) 10 LMI Benefit

This Section shall be amended by adding the following sentence: “Notwithstanding the foregoing, Subrecipient shall use best efforts to ensure that 60% of the Grant Funds allocated to ERB are expended for activities that benefit low and moderate income families.”

VIII. Section III Payment Process; Compensation

This Section shall be amended by adding the following phrase “on a sampling basis” to the third sentence in subsection A resulting in the revised sentence as follows:

“Following review on a sampling basis and approval of the Draw Down requests by the Commissioner of the GRANTEE, or his designee, approved Draw Down requests shall be submitted to the GRANTEE Finance Director...”

IX. Section III Payment Process; Compensation

This Section shall be amended by adding an additional sentence to subsection B as follows:

"Payment of Activity Delivery Costs and Administrative Expenses incurred by the New Jersey Board of Public Utilities ("BPU") in connection with its implementation of the New Jersey Energy Resilience Bank are paid to BPU from the GRANTEE via electronic funds transfer."

X. It is further agreed and understood that the language in this First Amendment shall supersede any language to the contrary contained in the Agreement and that all other terms and conditions of the Agreement shall remain the same, unchanged and in full force and effect.

XI. Any capitalized word not defined herein shall have the meaning ascribed to it in the Agreement.

The Parties have executed on the date set forth next to their respective signatures below, but effective as of the date first above written.

**STATE OF NEW JERSEY, DEPARTMENT OF
COMMUNITY AFFAIRS**

Name: 72e

Title: Commissioner

Date: 8-12-14

**NEW JERSEY ECONOMIC DEVELOPMENT
AUTHORITY**

Name: Richard J.

Title: Chief Executive Officer

Date: August 8, 2014

**APPENDIX B
STATEMENT OF ASSURANCES**

**ADDITIONAL FEDERALLY FUNDED AGREEMENT PROVISIONS
COMMUNITY DEVELOPMENT BLOCK GRANT-DISASTER RECOVERY FUNDED
PROJECTS**

ASSURANCES

The purpose of this Statement of Assurances is to list requirements applicable to programs funded in whole or in part by the Community Development Block Grant – Disaster Recovery (“CDBG-DR”) funds received from the U.S. Department of Housing and Urban Development (“HUD”). Not all of the requirements listed herein shall apply to all the activities or work of the Board of Public Utilities (“BPU”) under the Subrecipient Agreement dated August 19, 2014 by and between BPU and the New Jersey Economic Development Authority (“NJEDA”), as amended by the First Amendment to Subrecipient Agreement (together, the “Amended Agreement”) which sets forth the duties of the BPU concerning the Energy Resilience Bank.

BPU hereby assures and certifies that:

1. It possesses legal authority to serve as a subrecipient of a Community Development Block Grant for Disaster Recovery (“CDBG - DR”) and to execute the proposed Energy Resilience Bank (ERB) activities under the Action Plan and ensuing Amendments.
2. Its governing body has duly adopted, or passed as an official act, a resolution, motion or similar action authorizing the signing of the ERB Amended Agreement as approved with EDA and directing and authorizing the person identified as the official representative of the BPU to act in connection with the CDBG-DR funds, sign all understandings and assurances contained therein, and to provide such additional information as may be required.
3. It and its agents, employees, assigns, subrecipients, contractors, subcontractors or other third parties receiving funds for CDBG-DR programs under the Amended Agreement shall be responsible for complying with all applicable CDBG-DR Program and CDBG regulations, guidelines and standards in a manner satisfactory to the State and the U.S. Department of Housing and Urban Development (“HUD”), including all administration and compliance requirements set forth by this Statement of Assurances.
4. It shall require that each subrecipient, contractor, subcontractor or other third parties as a condition for receiving CDBG-DR Program funding reimbursement, comply with all statutes, regulations, and requirements specified in this and the other appendices to the Amended Agreement, as applicable. Every CDBG-DR funded agreement entered into by BPU shall set forth these requirements.

5. It agrees to comply with all applicable Federal regulations pertaining to CDBG-DR, cross-cutting statutes and regulations, subject to waivers cited in the Federal Register / Vol. 78, No. 43 / Tuesday, March 5, 2013, Department of Housing and Urban Development, [Docket No. FR-5696-N-01] Allocations, Common Application, Waivers, and Alternative Requirements for Grantees Receiving CDBG - DR funds in Response to SuperStorm Sandy, and which may hereinafter be granted by HUD.
6. In the occasion that two or more applicable rules, regulations, or procedures related to, incorporated into, or otherwise referenced in the Amended Agreement, or in this and other appendices to the Amended Agreement, are in conflict with one another, the most proscriptive rule, regulation, or procedure shall apply.

BPU HEREBY AGREES TO THE FOLLOWING PROVISIONS (AS APPLICABLE):

I. GENERAL PROVISIONS

- A. Subject to Section IV of Amended Agreement, the Board of Public Utilities (“BPU”) will assist the EDA with technical review under the CDBG-DR program and use the CDBG-DR Grant Funds so as to give maximum feasible priority to activities that will benefit low and moderate income families, aid in the prevention or elimination of slums or blight, or meet other community development needs having urgency.
- B. It will establish safeguards to prohibit employees from using official positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties, in accordance with CDBG regulations.
- C. It will abide by and enforce the conflict of interest requirement set forth in 24 CFR 570.489, 24 CFR §570.611, and 2 CFR 200.112. Except for approved eligible administrative and personnel costs, none of BPU’s designees, agents, subconsultants, members, officers, employees, subcontractors, and no other public official who exercises or who has exercised any functions or responsibilities with respect to the CDBG-DR funded Program during his or her tenure, or who is in a position to participate in a decision-making process or gain inside information with regard to the Program, has or shall have any interest, direct or indirect, in any contract or subcontract or the proceeds thereof for work performed in connection with the Program or in any Activity, or benefit therefrom, which is part of this Amended Agreement at any time during or after such person's tenure unless all procedures for an exception have been documented and submitted in writing to the DCA for approval.
- D. It will comply with the provisions of the Hatch Act that limit the political activity of employees and the HUD regulations governing political activity at 24 CFR §570.207.

- E. It will comply with HUD rules prohibiting the use of CDBG funds for inherently religious activities, as set forth in 24 CFR §570.200(j), except for circumstances specified in the Department of Housing and Urban Development Allocations, Common Application, Waivers, and Alternative Requirements for Grantees Receiving Community Development Block Grant (CDBG) Disaster Recovery Funds in Response (March 5, 2013). Funding for rehabilitating or reconstructing a storm-damaged or destroyed building may be appropriate where a facility is not used exclusively for the benefit of the religious congregation (i.e., a homeless shelter, food pantry, adult literacy or child care center). When used for both religious and secular purposes, CDBG-DR funds may pay the portion of eligible rehabilitation or construction costs attributable to the non-religious use.
- F. It will give the State and HUD, and any of their representatives or agents, access to and the right to examine all records, books, papers, or documents related to its receipt or use of CDBG Funds.
- G. It will comply with the provisions in 24 CFR §570.200(c) regarding special assessments to recover capital costs if imposed.
- H. It certifies that no federally appointed funds will be used for lobbying purposes regardless of level of government, in accordance with the regulations found at 2 CFR 200.450
- I. It certifies that it shall provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988, as amended, and with 2 CFR Part 182 and Part 2429. Further, it will require sub-subrecipients, developers, community-based development organizations (“CBDO”), lower tier Contractors and any third parties providing CDBG-DR funded services to comply with the Drug-Free Workplace Act of 1988, as amended, and with 2 CFR Part 182 and Part 2429.
- J. It shall adhere to Section 312 of the Stafford Act and 76 FR 71060 (published November 16, 2011), regarding duplication of benefit requirements applicable to the CDBG-DR program. BPU shall ensure that no Program component supported by CDBG-DR funds is also receiving financial assistance from any other program or from insurance or any other source for the same purpose. BPU agrees as a condition for funding to repay the funding if it later receives other disaster assistance funding for the same purposes herein.
- K. It agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG) including subparts J and K of these regulations, except that (1) BPU does not assume DCA’s environmental responsibilities described in 24 CFR 570.604 and (2) BPU does not assume DCA’s responsibility for initiating the review process under the provisions of 24 CFR Part 52.

- L. It agrees to comply with all other applicable federal, State and local laws, regulations and policies governing the CDBG Funds available under this Amended Agreement to supplement rather than supplant funds otherwise available.

II. FINANCIAL MANAGEMENT AND PROCUREMENT

To the extent applicable, BPU shall comply with, and shall require any sub-subrecipient, developer, CBDO or lower-tier Contractor funded in whole or in part with CDBG Funds to comply with, the following financial and program management and procurement standards:

- A. It shall adhere to the principles and standards governing federal grant distribution set forth in the OMB Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (2 CFR Part 200).
- B. It shall comply with the uniform administrative requirements set forth at 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards).
- C. It shall ensure that any contract made utilizing CDBG funds contains provisions which prohibit the making of any contract award to any party that is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs subject to 2 CFR Part 2424. Additional policies concerning debarment and suspension are contained at 2 CFR Part 180 and 2 CFR Part 2424. It shall certify that it and all subconsultants and subcontractors are not listed on the government-wide Excluded Parties List System in the System for Award Management (SAM), in accordance with OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 and 12689, "Debarment and Suspension," as set forth at 2 CFR 2424 (CDBG-DR funds may not be provided to excluded or disqualified persons), <https://www.sam.gov/portal/public/SAM/>.
- D. It shall comply with all requirements imposed by the State concerning special requirements of law, program requirements, and other administrative requirements.
- E. It shall comply with 24 CFR Part 570 and 2 CFR Part 200 regarding the management and disposition of cash, real and personal property acquired with CDBG-DR funds.
- F. It shall comply with 24 CFR 570.489: Program Administrative Requirements;
- G. It shall comply with 24 CFR 570.490: Recordkeeping requirements;
- H. It shall comply with 24 CFR Section 570.489(j) regarding change of use of real property. These standards apply to real property within BPU's control (including activities undertaken by sub-subrecipients, subcontractors and third parties) which was acquired in whole or in part using CDBG-DR funds. These standards apply from

the date CDBG-DR funds are first spent until five years after the closeout of the Program.

1. BPU may not change the use or planned use of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made, without first providing citizen review and comment and either:
 - a. The new use meets one of the national objectives and is not a building for the general conduct of government;
 - b. The requirements of 24 CFR Section 570.489(j) are met.
2. If the change of use does not qualify, BPU may retain or dispose of the property if the CDBG-DR program is reimbursed for the fair market value of the property, less any portion of the value that is attributable to non-CDBG-DR funds.
3. Following the reimbursement the property will no longer be subject to any CDBG-DR requirements.

III. PERSONALLY IDENTIFIABLE INFORMATION

BPU agrees to comply with the Privacy Act of 1974 and HUD rules and regulations related to the protection of personally identifiable information (PII). BPU shall ensure that all staff, subrecipients, contractors, consultants, and their employees that have access to PII shall be provided with, and sign, a Non-Disclosure Agreement to protect any personally identifiable information necessary to complete their scope of work, or BPU shall verify that said persons/entities do not have access to this type of personally identifiable information where the forms are not required. BPU shall also ensure that any subrecipient or contractor procured for the design, development, or operation of a system of records on individuals do so in compliance with 48 CFR 24.102, et seq. The term “personally identifiable information” refers to information which can be used to distinguish or trace an individual’s identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. See 2 CFR 200.79 and OMB M-07-16.

IV. ENVIRONMENTAL REGULATORY COMPLIANCE

- A. BPU may not begin any Project Activities without prior written consent of the New Jersey Department of Environmental Protection (“DEP”) and DCA, as follows:
 1. For all activities undertaken, BPU agrees that it will provide information as needed to DEP for site-specific activities.

This will include, but is not limited to:

- i. Providing the names of all facilities receiving federal assistance so that DEP can ensure that the facilities are not listed on the United States Environmental Protection Agency's (EPA) list of violating facilities Providing site-specific information regarding the age, location and prior ground disturbance of all facilities assisted, to determine compliance requirements with Section 106 of the National Historic Preservation Act of 1966, and the Preservation of Archaeological and Historical Data Act of 1966. and the provisions of 24 CFR Part 55 and Executive Order 11988, as amended by Executive Order 12148, relating to evaluation of flood hazards;
2. It will work with DEP to ensure beneficiaries comply with the flood insurance purchase requirement of Section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. §4001 et seq., which requires the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of HUD as an area having special flood hazards. For purposes herein, the phrase "federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect federal funding. Additionally:
 - a. BPU will follow HUD procedures and mechanisms to ensure that assisted property owners comply with all flood insurance requirements, prior to providing assistance, as well as post-assistance requirements related thereto,
 - b. *Flood insurance purchase requirements.* HUD does not prohibit the use of CDBG-DR funds for existing residential buildings in the Special Flood Hazard Area (SFHA) (or "100-year" floodplain). With respect to flood insurance, a HUD-assisted homeowner for a property located in the SFHA must obtain and maintain flood insurance in the amount and duration prescribed by FEMA's National Flood Insurance Program. Section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a) mandates the purchase of flood insurance protection for any HUD assisted property within the SFHA.
 - c. *Future Federal assistance to owners remaining in a floodplain.* (1) Section 582 of the National Flood Insurance Reform Act of 1994, as amended, (42 U.S.C. 5154a) prohibits flood disaster assistance in certain circumstances. No Federal disaster relief assistance may be used to make a payment (including any loan assistance payment) to a person for repair, replacement, or restoration for damage to any personal, residential, or commercial property if that person at any time has received Federal flood disaster assistance that was conditioned on the person first having obtained flood insurance and the person has subsequently failed to obtain and

maintain flood insurance. BPU may not provide CDBG disaster assistance for the repair, replacement, or restoration to a person who has failed to meet this requirement.

- d. BPU will assist DEP to ensure that in the event of transfer of any property having received CDBG-DR assistance, the transferor notifies the transferee in writing of the requirements to 1) Obtain flood insurance, if the property is not insured as of the date of transfer; 2) Maintain flood insurance; 3) Require the transferor, if there is failure to notify the transferee, to reimburse the federal government in the amount of any subsequent disaster relief assistance if such funds are expended on the property after the date of transfer.
 3. BPU will cooperate with DEP to require all assisted properties to be elevated, repaired, reconstructed or newly-constructed (including both commercial and residential properties) in accordance with the newly-released FEMA Base Flood Elevation Maps (reference table 2-6 in the state's Action Plan).
 4. In accordance with 24 CFR 58.6(b), BPU agrees that it will not provide any Grant Funds to a small business that had previously received federal flood disaster assistance conditioned on obtaining and maintaining flood insurance and the small business failed to obtain and maintain such insurance.
- B. To the extent applicable, BPU must comply with HUD regulations found at 24 CFR Part 58, implementing the National Environmental Policy Act ("NEPA"), 42 U.S.C. §4321 *et seq.*, and other Federal environmental requirements, including but not limited to:
1. Floodplain management and wetland protection:
 - a. Executive Order 11990, Protection of Wetlands (May 24, 1977) (42 FR 26961), 3 CFR, 1977 Comp., p. 121, as interpreted by HUD regulations at 24 CFR 55, particularly sections 2 and 5 of the order;
 - b. Executive Order 11988, Floodplain Management, May 24, 1977 (42 FR 26951), 3 CFR, 1977 Comp., p. 117, as interpreted in HUD regulations at 24 CFR part 55, particularly section 2(a) of the order;
 2. The Coastal Zone Management Act of 1972 (16 U.S.C. § 1451 *et seq.*), as amended, particularly sections 307(c) and (d) (16 U.S.C. §§1456(c) and(d));
 3. In relation to water quality:
 - a. Executive Order 12088, as amended by Executive Order 12580, relating to the prevention, control and abatement of water pollution;

- b. The Safe Drinking Water Act of 1974 (42 U.S.C. §§ 201, 300(f) et seq. and U.S.C. §349), as amended, particularly Section 1424(e) (42 U.S.C. §§ 300h-303(e)), which is intended to protect underground sources of water. No commitment for federal financial assistance can be entered into for any project which the U.S. Environmental Protection Agency (“EPA”) determines may contaminate an aquifer which is the sole or principal drinking water source for an area (40 CFR 149); and
 - c. The Federal Water Pollution Control Act of 1972, as amended, including the Clean Water Act of 1977, Public Law 92-212 (33 U.S.C. §1251, et seq.) which provides for the restoration and maintenance of the chemical, physical and biological integrity of the nation’s water.
4. Endangered Species Act of 1973 (16 U.S.C. §1531 et seq.), as amended, particularly section 7 (16 U.S.C. §1536);
5. The Fish and Wildlife Coordination Act of 1958, as amended;
6. Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271 et seq.), particularly sections 7(b) and (c) (16 U.S.C. §1278(b) and (c));
7. Executive Order 11738, providing for administration of the Clean Air Act and the Federal Water Pollution Control Act With Respect to Federal Contracts, Grants, or Loans, and EPA regulations (40 CFR 15);
8. The Clean Air Act of 1970 (42 U.S.C. § 7401 et seq.) as amended, particularly sections 176(c) and (d) (42 U.S.C. § 7506(c) and (d)), and 40 CFR 6, 51, 93, which prohibits engaging in, supporting in any way, providing financial assistance for, licensing or permitting, or approving any activity which does not conform to State or Federal implementation plans for national primary and secondary ambient air quality standards.
9. The Farmland Protection Policy Act of 1981, 7 U.S.C.A. §4201 et seq., particularly sections 1540(b) and 1541 (7 U.S.C. §4201(b) and §4202), and Farmland Protection Policy, 7 CFR 658, which require recipients of federal assistance to minimize the extent to which their projects contribute to the unnecessary and irreversible commitment of farmland to nonagricultural uses;
10. Noise abatement and control requirements at 24 CFR 51B;
11. Explosive and flammable operations requirements at 24 CFR 51C;
12. Requirements at 24 CFR 58.5(i) relating to toxic chemicals and radioactive materials;

13. Environmental Justice, Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994 (59 FR 7629), 3 CFR, 1994 Comp. p. 859.
14. It will comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94A 163, 89 Stat. 871).

C. Compliance with Lead-Based Paint Requirements

In delivering programmatic activity supported by CDBG-DR funds pertaining to housing units built before 1978, or in contracting with third parties for such services supported by CDBG-DR funds, BPU shall comply with the lead-based paint requirements set forth at 24 CFR Part 35, subparts A, B, J, K and R. The regulation implements section 1012 and 1013 of the Residential Lead Paint Hazard Reduction Act of 1972, which is Title X of the Housing and Community Development Act of 1992.

V. FEDERAL LABOR STANDARDS

To the extent applicable, BPU shall comply with Federal Labor Standards, including:

1. Section 110 of the Housing and Community Development Act of 1974, 42 U.S.C. §5310, 24 CFR §570.603 and HUD Handbook 1344.1 Federal Labor Standards Requirements in Housing and Community Development Programs, as revised, which require that all laborers and mechanics (as defined at 29 CFR §5.2) employed by BPU (including its subcontractors/subconsultants) in connection with construction contracts over \$2,000, are paid wages at rates not less than those prevailing on similar construction in the locality as per the Davis-Bacon Act (40 U.S.C. §3141 et seq.), as amended; except that these requirements do not apply to the rehabilitation of residential property if such property contains less than 8 units;
2. The Contract Work Hours and Safety Standards Act (40 U.S.C. §3701 et seq.), requiring that mechanics and laborers (including watchmen and guards) employed on federally assisted contracts of \$100,000 or greater be paid wages of not less than one and one-half times their basic wage rates for all hours worked in excess of forty in a work-week;
3. The Federal Fair Labor Standards Act (29 U.S.C. 201 et seq.), requiring that covered nonexempt employees be paid at least the minimum prescribed wage, and also that they be paid one and one-half times their basic wage rate for all hours worked in excess of the prescribed work-week;

4. The Copeland “Anti-Kickback” Act (18 U.S.C. 874), as supplemented in Department of Labor regulations (29 CFR 3), which requires payment of wages once a week and allows only permissible payroll deductions;
5. Department of Labor regulations in parallel with HUD requirements above:
 - a. 29 CFR 1: Procedures for Predetermination of Wage Rates
 - b. 29 CFR 5: Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (Also, Labor Standards Provisions Applicable to Non-construction Contracts Subject to the Contract Work Hours and Safety Standards Act)
 - c. 29 CFR 6: Rules of Practice for Administrative Proceedings Enforcing Labor Standards In Federal and Federally Assisted Construction Contracts and Federal Service Contracts
 - d. 29 CFR 7: Practice Before the Administrative Review Board With Regard to Federal and Federally Assisted Construction Contracts.

VI. ACQUISITION AND RELOCATION

- A. BPU agrees to comply with the following statutes and regulations:
 - i. Title II (Uniform Relocation Assistance) and Sections 301-304 of Title III (Uniform Real Property Acquisition Policy) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Chapter 61), and HUD implementing instructions at 24 CFR Part 42 and 24 CFR §570.606; and
 - ii. Section 104(d) of the Housing and Community Development Act of 1974, as amended ; and
 - iii. It will comply with 42 U.S.C. 3537c (Prohibition of Lump Sum Payments);
 - iv. It will comply with 49 CFR Part 24 (Uniform Relocation and Real Property Acquisition for Federal and Federally-Assisted Programs)
 - v. URA Fixed Residential Moving Cost Schedule
 - vi. 24 CFR Part 42 (Displacement, Relocation Assistance and Real Property Acquisition for HUD and HUD-Assisted Programs)
 - vii. 24 CFR 570.606 (Displacement, Relocation, Acquisition and Replacement of Housing)

- B. BPU agrees to provide relocation assistance to those that are displaced as a direct result of acquisition, rehabilitation, demolition or conversion for a CDBG-DR assisted project, with the exception of:
1. The one-for-one replacement requirements at Section 104(d)(2)(A)(i)–(ii) and (d)(3) and 24 CFR 42.375 which have been waived by HUD;
 2. The relocation assistance requirements at section 104(d)(2)(A) and 24 CFR 42.350 to the extent that they differ from the requirements of the URA and implementing regulations at 49 CFR part 24, as modified by the Act for activities related to disaster recovery;
 3. Arms-length voluntary purchase requirements at 49 CFR 24.101(b)(2)(i)–(ii) are waived to the extent that they apply to an arm’s length voluntary purchase carried out by a person who uses funds allocated under this Notice and does not have the power of eminent domain;
 4. Rental assistance to a displaced person: The requirements at sections 204(a) and 206 of the URA, and 49 CFR 24.2(a)(6)(viii), 24.402(b)(2), and 24.404 are waived to the extent that they require the BPU to use 30 percent of a low-income displaced person’s household income in computing a rental assistance payment if the person had been paying more than 30 percent of household income in rent/utilities without “demonstrable hardship” before the project;
 5. Tenant-based rental assistance requirements of sections 204 and 205 of the URA, and 49 CFR 24.2(a)(6)(ix) and 24.402(b) are waived to the extent necessary to permit a grantee to meet all or a portion of a grantee’s replacement housing financial assistance obligation to a displaced tenant by offering rental housing through a tenant-based rental assistance (TBRA) housing program subsidy, provided that the tenant is provided referrals to comparable replacement dwellings in accordance with 49 CFR 24.204(a) where the owner is willing to participate in the TBRA program, and the period of authorized assistance is at least 42 months;
 6. Moving expense requirements at section 202(b) of the URA and 49 CFR 24.302; BPU may instead choose to establish a “moving expense and dislocation allowance” under a schedule of allowances that is reasonable takes into account the number of rooms in the displacement dwelling;
 7. The regulation at 24 CFR 570.606(d) is waived to the extent that it requires optional relocation policies to be established; units of local government receiving CDBG-DR funds may establish separate optional policies.

VII. FAIR HOUSING AND NON-DISCRIMINATION

Any act of unlawful discrimination committed by BPU or failure to comply with the following obligations when applicable shall be grounds for termination of this Amended Agreement or other enforcement action.

BPU shall comply with:

- i. Title VI of the Civil Rights Act of 1964 and as amended in 1988, 42 U.S.C. §200d et seq., as amended, and the regulations issued pursuant thereto (24 CFR Part1), which provide that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the BPU receives federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of federal financial assistance extended to the BPU, this assurance shall obligate the BPU, or in the case of any transfer of such property, and transferee, for the period during which the property or structure is used for another purpose involving the provision of similar services or benefits.
- ii. Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–3619), which requires administering all programs and activities relating to housing and community development in a manner to affirmatively further fair housing. Title VIII further prohibits discrimination against any person in the sale or rental of housing, or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person, because of race, color, religion, sex, national origin, handicap or familial status.
- iii. Title II of the Civil Rights Act of 1968, which prohibits discrimination because of race, color, religion, or natural origin in certain places of public accommodation, such as hotels, restaurants, and places of entertainment.
- iv. Architectural Barriers Act (ABA) of 1968, 42 U.S.C. 4151 et seq. The ABA requires access to buildings designed, built, altered, or leased by or on behalf of the federal government or with loans or grants, in whole or in part, from the federal government. As used in the ABA, the term “building” does not include privately owned residential structures not leased by the government for subsidized housing programs.
- v. Title IX of the Education Amendments Act of 1972, 20 U.S.C. 1681 et seq., which prohibits discrimination on the basis of sex in any federally funded education program or activity.
- vi. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which provides that no otherwise qualified individual shall, solely by reason of his or her handicap be excluded from participation, denied program benefits or subjected to discrimination under any program or activity receiving federal funding assistance.

- vii. Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794d, which requires Federal agencies to make their electronic and information technology (EIT) accessible to people with disabilities, and applies to all federal agencies when they develop, procure, maintain or use electronic and information technology.
- viii. Section 109 of Title I of the Housing and Community Development Act of 1974, and the regulations issued pursuant thereto (24 CFR 570.602), which provides that no person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds provided under that Part. Section 109 further prohibits discrimination to an otherwise qualified individual with a handicap, as provided under Section 504 of the Rehabilitation Act of 1973, as amended, and prohibits discrimination based on age as provided under the Age Discrimination Act of 1975. The policies and procedures necessary to ensure enforcement of section 109 are codified in 24 CFR 6.
- ix. Section 104(b)(2) of the Housing and Community Development Act of 1974, 42 U.S.C. 5304(b), which requires communities receiving community development block grants to certify that the grantee is in compliance with various specified requirements.
- x. Age Discrimination Act of 1975, 42 U.S.C. 6101 et seq., which prohibits discrimination on the basis of age in programs and activities receiving federal financial assistance.
- xi. Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12131 et seq., which prohibits discrimination against people with disabilities by public entities, which includes any state or local government and any of its departments, agencies or other instrumentalities.
- xii. Housing for Older Persons Act of 1995 (“HOPA”) (see 42 U.S.C. 3607), which governs housing developments that qualify as housing for persons age 55 or older
- xiii. It shall require that every newly constructed or altered building or facility (other than a privately owned residential structure, and certain other limited exceptions) complies with any accessibility requirements required by Title III of the Americans with Disabilities Act of 1990 (42 U.S.C.A. § 12181 et seq.), and shall be responsible for conducting inspections to ensure compliance with these specifications by any contractor or subcontractor.

VIII. SECTION 3 REQUIREMENTS

Section 3 of the Housing and Urban Development Act of 1968, as amended, is to ensure that employment and other economic opportunities generated by certain HUD funds, including CDBG funds, shall to the greatest extent feasible be directed to low- and very low-income persons, and to business concerns that provide economic opportunities to low and very low

income persons. Each Grantee/Contractor receiving CDBG-DR funding shall ensure that any new employment, training, and contracting opportunities to the greatest extent feasible be made known and available to low- and very low-income persons, and to businesses that employ these persons, within their community. Section 3 applies to grantees and subrecipients that receive assistance exceeding \$200,000 in CDBG-DR funding, and to consultants, contractors and subcontractors that enter into contracts for Section 3 covered projects in excess of \$100,000. Section 3 covered projects include any activity that involves housing construction, rehabilitation, and demolition, or other public construction, and includes professional service contracts arising in connection with such projects.

- A. BPU shall ensure that requirements under Section 3 of the Housing and Urban Development Act of 1968 (HUD Act of 1968) shall apply to all individual properties assisted with these funds, regardless of the actual amount spent on each individual unit/property. Compliance with the provisions of Section 3 of the HUD Act of 1968, as amended, and as implemented by the regulations set forth in 24 CFR 135, and all applicable rules and orders issued prior to the execution of this contract, shall be a condition of the CDBG-DR assistance provided under this Amended Agreement and binding upon the BPU and third-party entities.
- B. If BPU has the need to hire new persons to complete the Section 3 covered contract, or needs to subcontract portions of the work to another business, BPU must direct its newly created employment and/or subcontracting opportunities to Section 3 residents and business concerns. The same numerical goals (see below) apply to contractors and subcontractors.
- C. BPU shall ensure compliance with the statutory and regulatory requirements of Section 3 in its own operations, and those of covered subconsultants, subcontractors or third parties. These responsibilities include:
 - i. Making efforts to meet the minimum numerical goals found at 24 CFR 135.30;
 - ii. Complying with the specific responsibilities at 24 CFR 135.32; and
 - iii. Submitting quarterly reports on Section 3 projects using HUD Form 60002. Reports will be due within one week of the end of each calendar quarters. Reports shall be submitted to:

Department of Community Affairs
Sandy Recovery Division
Monitoring and Compliance Office—6th Floor
101 S. Broad Street
Trenton, New Jersey 08625-0800
- D. For purposes of CDBG-DR funds received in response to Superstorm Sandy, an individual is eligible to be considered a Section 3 resident if the annual wages or

salary of the person are at, or under, the HUD-established income limit for a one-person family for the jurisdiction. See 78 FR 14329, 14346 (March 5, 2013).

E. The following language must be included in all contracts and subcontracts:

- A. *The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.*
- B. *The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.*
- C. *The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.*
- D. *The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.*
- E. *The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.*

- F. *Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.*
- G. *With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).*

IX. NONDISCRIMINATION AND FAIR HOUSING

In delivering programmatic activity supported by CDBG-DR funds, or in contracting with third parties for services supported by CDBG-DR funds, BPU shall comply with the following to the extent applicable:

- A. Executive Order 11063: Equal Opportunity in Housing, November 20, 1962, as amended by Executive Order 12259, and the regulations issued pursuant thereto, which pertains to equal opportunity in housing and non-discrimination in the sale or rental of housing built with federal assistance.
- B. Executive Order 11246: EEO and Affirmative Action Guidelines for Federal Contractors Regarding Race, Color, Gender, Religion, and National Origin, September 25, 1965 and Executive Order 11375: Amending Executive Order No. 11246, October 13, 1967, which provide that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of federal or federally assisted construction contracts. Further contractors and subcontractors on federal and federally assisted construction contracts shall take affirmative action to insure fair treatment in employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training and apprenticeship.
- C. Executive Order 12086: Consolidation of contract compliance functions for equal employment opportunity, October 5, 1978.
- D. Executive Order 12892: Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing, January 17, 1994.

- E. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, February 11, 1994.
- F. Executive Order 13166: Improving Access to Services for Persons with Limited English Proficiency, August 11, 2000.
- G. Executive Order 13217: Community-Based Alternatives for Individuals with Disabilities, June 19, 2001.
- H. Executive Order 13330: Human Service Transportation Coordination, February 24, 2004.
- I. BPU further affirms it will comply with implementing regulations for the above:
 - 1. 24 Code of Federal Regulations Part 1: Nondiscrimination in Federally Assisted Programs of HUD
 - 2. 24 Code of Federal Regulations Part 3: Nondiscrimination on the Basis of Sex in Education Programs or Activities receiving Federal Financial Assistance
 - 3. 24 Code of Federal Regulations Part 5.105: Other Federal Requirements
 - 4. 24 Code of Federal Regulations Part 6: Nondiscrimination in Programs, Activities Receiving Assistance under Title I of the Housing and Development Act of 1974
 - 5. 24 Code of Federal Regulations Part 8: Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development
 - 6. 24 CFR Code of Federal Regulations Parts 50.4 (l) and 58.5 (j): Environmental Justice
 - 7. 24 Code of Federal Regulations Part 91.225 (a)(1): Affirmatively Furthering Fair Housing
 - 8. 24 Code of Federal Regulations Part 91.325 (a)(1): Affirmatively Furthering Fair Housing
 - 9. 24 Code of Federal Regulations Part 91.325(b)(5): Compliance with Anti-discrimination laws
 - 10. 24 Code of Federal Regulations Part 91.520: Performance Reports
 - 11. 24 Code of Federal Regulations Parts 100-125: Fair Housing

12. 24 Code of Federal Regulations Part 107: Non-discrimination and Equal Opportunity in Housing Under Executive Order 11063 (State Community Development Block Grant grantees)
13. 24 CFR Part 121: Collection of Data
14. 24 CFR Part 135: Economic Opportunities for Low- and Very Low-Income Persons
15. 24 CFR Part 146: Non-discrimination on the Basis of Age in HUD Programs or Activities Receiving Federal Financial Assistance
16. 24 Code of Federal Regulations Part 570.206(c): Fair Housing Activities
17. 24 Code of Federal Regulations Part 570.487(b): Affirmatively Furthering Fair Housing
18. 24 Code of Federal Regulations Part 570.487(e): Architectural Barriers Act and Americans with Disabilities Act (State Community Development Block Grant grantees)
19. 24 Code of Federal Regulations Part 570.490(a)(b): Recordkeeping requirements
20. 24 Code of Federal Regulations 570.491: Performance Reviews and Audits
21. 24 Code of Federal Regulations Part 570.495(b): HCDA Section 109 nondiscrimination
22. 24 Code of Federal Regulations Part 570.506(g): Fair Housing and equal opportunity records
23. 24 Code of Federal Regulations Part 570.601: Affirmatively Further Fair Housing
24. 24 Code of Federal Regulations Part 570.608 and Part 35: Lead-Based Paint
25. 24 Code of Federal Regulations Part 570.614: Architectural Barriers Act and Americans with Disabilities Act
26. 24 Code of Federal Regulations Part 570.904: Equal Opportunity and Fair Housing Review
27. 24 Code of Federal Regulations Part 570.912: Nondiscrimination compliance

X. LIMITED ENGLISH PROFICIENCY

Where potential interaction with persons with Limited English Proficiency (“LEP”) is anticipated, all services must be made available to LEP persons in accordance with the State’s Language Access Plan (LAP) (available online at http://www.renewjerseystronger.org/wp-content/uploads/2014/08/NJ-DCA-LAP_Version-1.0_2015.01.14-for-RenewJerseyStronger.pdf) and HUD requirements (see Federal Register Notice FR–4878–N–02, available online at <http://www.gpo.gov/fdsys/pkg/FR-2007-01-22/pdf/07-217.pdf>). Services should be provided in any languages for which qualified translators are available. For all other languages, DCA’s *I Speak* Cards (to be provided by DCA) may be used and LEP households may be referred to DCA’s language line and other translation services. DCA translation services will only be available to CDBG-DR funded programs. All LEP services provided pursuant to this Contract will be reported to DCA monthly by the number and type of those services, so that DCA may report to HUD.

APPENDIX C RECORDS AND RECORDS RETENTION

BPU shall be responsible for maintaining records, in accordance with N.J.A.C. 17:44-2.2(b), 2 CFR 200.333, 24 CFR 570.502 and 570.506. Records shall be maintained for the longer of:

- (a) a period of three (3) years from submission of the final expenditure report for the Rebuild by Design Program; and
- (b) a period of five (5) years from the date of final payment.

- a. Description, geographic location and budget of each funded activity;
- b. Eligibility and national objective determinations for each activity;
- c. Personnel files;
- d. Property management files;
- e. HUD monitoring correspondence;
- f. Citizen participation compliance documentation;
- g. Fair Housing and Equal Opportunity records;
- h. Lump sum agreements;
- i. Environmental review records; and
- j. Documentation of compliance with other Federal requirements (e.g., Davis-Bacon, Uniform Relocation Act, and Lead-Based Paint).

FINANCIAL RECORDS to be maintained include:

- a. Chart of accounts;
- b. Manual on accounting procedures;
- c. Accounting journals and ledgers;
- d. Source documentation (purchase orders, invoices, canceled checks, etc.);
- e. Procurement files (including bids, contracts, etc.);
- f. Real property inventory;
- g. Bank account records (including revolving loan fund records, if applicable);
- h. Draw Down requests;
- i. Payroll records and reports;
- j. Financial reports;
- k. Audit files; and
- l. Relevant financial correspondence.

PROJECT/ACTIVITY records should include the following documentation:

- a. Eligibility of the activity;
- b. Evidence of having met a national objective (see below);
- c. Subrecipient Agreement;
- d. Any bids or contracts;
- e. Characteristics and location of the beneficiaries;
- f. Compliance with special program requirements, including environmental review records;

- g. Budget and expenditure information (including draw requests); and
- h. The status of the project/activity.

Economic Development LMI Job Creation/Retention

- a. Written agreements with beneficiaries (i.e., loan agreements, promissory notes, mortgages, etc.) must be maintained for five years after the longer of: 1) the maturity date or earlier termination of the written agreement or 2) the expiration of the affordability period.
- b. HUD has waived 24 CFR 570.483(b)(4)(i) and 570.208(a)(4)(i) to allow identification of low- and moderate-income jobs benefit by documenting, for each person employed, the name of the business, type of job, and the annual wages or salary of the job. (HUD will consider the person income-qualified if the annual wages or salary of the job is at or under the HUD-established income limit for a one-person family.) This method replaces the standard CDBG requirement in which grantees must review the annual wages or salary of a job in comparison to the person's total household income and size (i.e., number of persons). This allows the collection of wage data from the assisted business for each position created or retained, rather than from each individual household. Records relating to job creation/retention must be maintained for five years.
- c. Public benefit: HUD has waived the public benefit standards at 42 U.S.C. 5305(e)(3), 24 CFR 570.482(f)(1), (2), (3), (4)(i), (5), and (6), and 570.209(b)(1), (2), (3)(i), (4), for economic development activities designed to create or retain jobs or businesses (including, but not limited to, long-term, short-term, and infrastructure projects). However, BPU must report and maintain documentation on the creation and retention of total jobs; the number of jobs within certain salary ranges; the average amount of assistance provided per job, by activity or program; the North American Industry Classification System (NAICS) code for each business assisted; and the types of jobs. HUD has also waived 570.482(g) and 570.209(c) and (d) to the extent these provisions are related to public benefit.

OTHER

- d. **Section 3:** Pursuant to the U.S. Housing Act of 1937 (42 U.S.C. 1437a(b)(2)) and 24 CFR 135.5, HUD may establish income limits to consider an individual to be a Section 3 resident. For this CDBG-DR program, an individual is eligible to be considered a Section 3 resident if the annual wages or salary of the person are at, or under, the HUD-established income limit for a one-person family for the jurisdiction.
- e. **Relocation:** Records covering displacements and acquisition must be retained for five years after the date by which all persons displaced from the property and all persons whose property is acquired for the project have received the final payment to which they are entitled in accordance with 92.353.
- f. **Litigation/Claims:** If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the expiration of the required record retention period, records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.

APPENDIX D
CONSTRUCTION, ALTERATIONS, REHABILITATION

- a. BPU affirms that activities involving new building construction, alterations, or rehabilitation will comply with the applicable New Jersey building code(s) as well as local building codes.
- b. BPU shall, to the extent feasible, ensure all rehabilitation, reconstruction, and new construction is designed to incorporate principles of sustainability, including water and energy efficiency, resilience and mitigating the impact of future disasters. Whenever feasible, BPU should follow best practices such as those provided by the U.S. Department of Energy Home Energy Professionals: *Professional Certifications and Standard Work Specifications*.
- c. BPU affirms that it will comply with the requirements of the Uniform Federal Accessibility Standards (UFAS) for the design, construction and alteration of buildings so that physically handicapped persons will have ready access to and use of them in accordance with the Architectural Barriers Act, 42 U.S.C. 4151-4157.

All reconstruction, new construction and rehabilitation must be designed to incorporate principles of sustainability, including water and energy efficiency, resilience, and mitigating the impact of future disasters.

APPENDIX E

ERB BUDGET FOR BPU TECHNICAL AND REGULATORY SERVICES

*Estimated FY 2016 -- ramp-up budget

		Avg./Unit Cost	Duration	Frequency	Subtotal	Salary Fringe + Payroll Taxes	Cont.	Estimated FY2016 Not To Exceed Budget
Staffing								
Chief Technical Officer	\$	110,000	Full Time	1/2 year	55,000	30.73%	10%	88,413
Sr. Staff (2)*		89,400	Full Time	3/4 year **	173,125	30.73%	10%	281,513
Staff (1)*	\$	60,300	Full Time	1/2 year **	73,375	30.73%	10%	121,165
				Subtotal	308,500			491,091
Contractors								
Rutgers CEEEP (Resiliency Cost Benefit Analysis + technical support)			Annual	1 Year Contract	75,000		15%	86,250
NI Institute of Technology (MicroGrid Work + technical support)			Annual	1 Year Contract	60,000		15%	69,000
Other anticipated (Energy Consultants)			Annual	As needed	30,000		15%	57,500
				Subtotal	185,000			212,750
Other Services								
Travel	\$	1,000	1 day	3 major + minor	10,000		15%	11,500
Meetings/Conferences/Pu blications/Related Expenses	\$	75,000	Annual	1 year	75,000		20%	90,000
				Subtotal	85,000			101,500
Total								\$805,341

* Different Staff member may rotate into and out of the ERB assignment

** This figure is not a straight calculation. It allows for variable personnel at differing rates billing time

Ongoing/FY 2017 Forward -- Not to Exceed Annual Projection

						Salary Fringe + Payroll Taxes	Cont.	Estimated Annual FY 2017 Forward Not To Exceed Budget
		Avg./Unit Cost	Duration	Frequency	Subtotal			
Staffing								
Chief Technical Officer	\$	110,000	Full Time	3/4 year	82,500	30.73%	10%	132,619
Sr. Staff (2)*	\$	89,400	Full Time	1 year**	233,300	30.73%	10%	375,351
Staff (2)*	\$	60,300	Full Time	1 year**	120,720	30.73%	10%	242,331
					Subtotal			750,301
Contractors								
Rutgers CEEEP (Resiliency Cost Benefit Analysis + technical support)			Annual	1 Year Contract	100,000		15%	115,000
NI Institute of Technology (MicroGrid Work + technical support)			Annual	1 Year Contract	125,000		15%	143,750
Other anticipated (Energy Consultants)			Annual	As needed	125,000		15%	143,750
					Subtotal			402,500
Other Services								
Travel	\$	1,000	1 day	3 major + minor	10,000		15%	11,500
Meetings/Conferences/Pu blications/Related Expenses	\$	75,000	Annual	1 year	75,000		20%	90,000
					Subtotal			101,500
Total						\$		1,254,301

BOARD MEMORANDUMS



NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

MEMORANDUM

TO: Members of the Authority

FROM: Timothy J. Lizura
President and Chief Operating Officer

RE: Rowan University/Rutgers – Camden Board of Governors
Biomedical Facilities Funding Application for the Joint Health Sciences Center

DATE: June 9, 2015

Summary

The Members are asked to preliminarily approve the Joint Health Sciences Center (“Center”) under P.L. 2006 c. 102, which provides \$50 million for biomedical research facilities in Camden, subject to the conditions noted in this memo.

Background

Under P.L. 2006 c. 102, the Authority may issue up to \$270 million in bonds to finance capital construction projects for stem cell research, life sciences and biomedical research facilities. Section 102 allocated \$50 million “to fund capital costs of biomedical research facilities,” subject to an agreement being reached between the Authority and Treasury for the repayment of the bonds, which will be paid through the State of New Jersey’s General Fund, subject to annual appropriations. Although there were other projects authorized under P.L. 2006 c. 102 (stem cell research facilities in New Brunswick and Newark, blood collection and cancer research facilities), no other project is currently under development.

Project Owner

Under P.L. 2006 c. 102, the “biomedical research facility” must be owned by Rutgers, the State University, located in Camden (“Rutgers”) and operated by a consortium of Rutgers, the Coriell Institute for Medical Research (“Coriell”), the Robert Wood Johnson Medical School in Camden (“RWJ”) and the Cancer Institute of New Jersey, South Jersey (“Cancer Institute”). The New Jersey Medical and Health Sciences Education Restructuring Act (“Restructuring Act”), P.L. 2012, c. 45, merged RWJ and the Cancer Institute into Rutgers; the only members of the consortium remaining are Rutgers and Coriell.

Rowan University/Rutgers – Camden Board of Governors (“Board of Governors”) was created by the Restructuring Act which provided the Board of Governors with the power to “develop plans, for the operating and governance of health science facilities, including the planning concerning the development of capital improvements or expansions of health science facilities.” The Board of Governors will contribute the required funds in excess of the \$50 million under the P.L. 2006 c. 102 to fund fixtures furniture and equipment and other costs. The Board of Governors is overseeing the development of the proposed Health Science Campus. It has

represented that it will work with all the parties to ensure that the ownership structure conforms to the statutory requirements of P.L. 2006. c. 102.

Proposed Health Science Campus

The Board of Governors, in cooperation with stakeholders from Rowan and Rutgers University, has developed a phased plan for a health sciences campus that will be developed at the southwest corner of Martin Luther King Boulevard (“MLK Boulevard”) and Broadway in Camden. The plan includes the development of three buildings: (1) the Joint Health Science Center (to be located at the southwest corner of MLK Boulevard and Broadway and is the subject of this funding request: (2) and two health science buildings, one immediately west (on MLK Boulevard) of the Joint Health Science Center, and another immediately south (on Broadway) of the Joint Health Science Center. The proposed campus is consistent with Camden’s Master Plan, which includes the development of an “eds and meds” district in downtown Camden. The campus will also be close to public transit (i.e., Walter Rand Transportation Center on Broadway), and several educational and medical institutions in Camden, which include: Rutgers University – Camden, Rowan University in Camden, Camden County College, Cooper University Hospital, CAMcare Health Corporation, Our Lady of Lourdes and Coriell Institute for Medical Research.

Proposed Joint Health Sciences Center

The Center, a four story, 65,000 SF building, will be located at the corner of MLK Boulevard and Broadway. The Center will include the following:

- Rowan University/Rutgers – Camden Board of Governors (3,000 SF)
- Biomedical & Biomedical Instructional/Clinical Space (11,870 SF)
- Biomedical Research Offices and Laboratory (21,540 SF)

The Center will be designed to advance collaborative research between Rowan and Rutgers – Camden. Rutgers – Camden will locate its computational and integrative biology program in the Center and Rowan will build upon its existing research program using the Rowan and Rutgers – Camden CCIB program to start up Rowan’s research programs. In addition, the Center will be used to support: (1) initiatives that may lead to products that are brought to market; (2) the attraction of researched based business to the build the Southern New Jersey economy; (3) the development of solutions to improve population health programs.

The Development Team

At this time, it is planned that the Camden County Improvement Authority (“CCIA”) will serve as developer for the Joint Health Science Center. CCIA will engage all the professionals to acquire the property, design and construct the Center. In Camden, the CCIA has developed and/or financed the following projects:

- Rutgers Graduate Student Housing (200,000 SF; \$35 million TDC)
- Cooper Medical School of Rowan University (160,000 SF, \$110 million TDC)
- Coriell Institute for Medical Research, Inc (21,500 SF, \$40 million)
- CCIA Parking Center (9 Level Parking Garage with ground floor retail; \$30 million TDC)

CCIA may also enter into a maintenance agreement for the facility.

Uses and Sources Statement

The Applicant included the following preliminary sources and uses statement for the development of the Center:

Uses	Budget	% Project Cost	\$ SF
Acquisition	\$3,883,000	7.55%	\$59.74
Site Work	\$1,000,000	1.95%	\$15.38
Professional Services	\$4,420,450	8.60%	\$68.01
Construction	\$38,100,000	74.10%	\$586.15
Fixtures Furniture & Equipment	\$1,100,000	2.14%	\$16.92
<i>Subtotal</i>	<i>\$48,503,450</i>	<i>94.34%</i>	<i>\$746.21</i>
Project Escalation	\$2,910,207	5.66%	\$44.77
Total Uses	\$51,413,657	100.00%	\$790.98

Sources	Budget	% Project Cost	\$ SF
Board of Governors	\$1,413,657	2.75%	\$21.75
Biomedical Research Facility Bond	\$50,000,000	97.25%	\$769.23
Total Sources	\$51,413,657	100.00%	\$790.98

Although the construction cost per square foot appears high, CCIA has provided information for similar projects in Camden:

Project	Cost Per Square Foot		
	@ Completion	in 2015 \$	Increase
MD Anderson Cooper Cancer Center (treatment & research facility) - completed 2013	\$388.00	\$404.00	4.12%
Cooper Medical School at Rowan University - completed 2012	\$487.00	\$507.00	4.11%

The MD Anderson Cooper Cancer Center left some space unfinished, which accounts for the lower costs. The proposed construction cost for the Center is approximately \$8 SF more than Cooper Medical School, but the difference can be accounted for the amount of lab space that will be constructed in the new facility.

Prior to issuance of the bonds for the project, bond counsel will be obtained, the board will approve the bond resolution, and approvals will be sought from the State Treasurer and the Joint Budget Oversight Committee, as required by the Act.

Final approval of the project will be subject to the following conditions:

1. Rutgers the State University, located in Camden, owns the facility;
2. A consortium, that operates the facility is consistent with P.L. 2006 c. 102;
3. The Treasurer and the Joint Budget Oversight Committee approve the bond financing;
4. The Treasurer and the Authority enter into a contract (or contracts) in which the Treasurer agrees to pay from the General Fund to the Authority subject to annual appropriation an amount equivalent to the debt service on the bonds issued to finance the Joint Health Sciences Center;
5. Bond counsel issues all appropriate opinions, including an opinion approving the ownership structure, the consortium, and the bond financing.

Recommendation

Subject to the five conditions stated in this memo, the Members are asked to preliminarily approve funding in the amount of \$50 million for the Joint Health Sciences Center in Camden which will be used according to the requirements of P.L. 2006 c. 102. Additional approvals for the issuance of the bonds will be sought at a later date.



Timothy J. Lizura
President and Chief Operating Officer

Prepared by: Juan Burgos



MEMORANDUM

TO: Members of the Authority

FROM: Timothy J. Lizura, President and Chief Operating Officer

DATE: June 9, 2015

SUBJECT: Respond, Inc.
\$270,314 Statewide Loan Pool Participation Loan
P24031

Request:

Approve the extension of EDA's \$270,314 participation in a Sun National Bank loan for one (1) year to May 1, 2016.

Background:

Respond, Inc. ("RI") is a 501(c)(3) non-profit organization that was formed in 1967. The organization is located in Camden and provides a variety of services including operating ABBOTT daycare classrooms, youth camps, homeless shelters and adult training classes.

In October 2008, the EDA approved a \$360,000 participation in a \$1.44 million Sun National Bank loan to fund Respond's employment training center for automotive repair and culinary arts at 924 and 925 North 8th Street, Camden. The original loan had a term of 5 years with a 20 year amortization. Project funding was supplemented by a \$1.2 million USED grant, and a \$1 million Camden Economic Recovery Board grant. Payments have been made as agreed.

Respond experienced a down turn in revenues due to declines in the need for day care enrollment, and as a result, incurred significant losses and did not meet its bank loan covenant requirement. The company is seeking to divest non-core assets to bolster its financial condition, and reduce expenses. The properties to be sold are primarily residential properties that were intended to be combined for use by the daycare program. The Bank has agreed, and Borrower has requested EDA, to extend the balloon loan maturity for one year to give the applicant the opportunity to implement these changes.

Recommendation:

Consent to a one (1) year extension on the \$270,314 participation loan to align with the bank's extension.

Prepared by: Heather M. O'Connell



MEMORANDUM

TO: Members of the Authority

FROM: Timothy J. Lizura, President and COO

DATE: June 9, 2015

SUBJECT: Projects Approved Under Delegated Authority - **For Informational Purposes Only**

The following projects were approved under Delegated Authority in May 2015:

New Jersey Business Growth Fund:

- 1) Boychuck LLC (P41097), located in Haddonfield Borough, Camden County, is a newly formed real estate holding company established to acquire a commercial property. The operating company, Bencepts Inc. d/b/a Benefit Concepts, is an employee benefit and financial services firm offering pension solutions, group benefits and individual wealth management for business owners and individuals. PNC Bank approved a \$500,000 bank loan with a five-year, 25% guarantee of principal outstanding, not to exceed \$125,000. The Company currently has six employees and plans to create six new positions within the next two years.

Premier Lender Program:

- 1) A & H Holdings LLC (P40798), located in Newark City, Essex County, is the real estate holding company formed to purchase the project property. The operating company, Park Lumber Yard Corp. was established in 1992 in Brooklyn, NY as a supplier of building and construction materials, serving contractors and homeowners located throughout the greater New York City area. Park Lumber is looking to expand into the New Jersey market through the purchase of a new facility in Newark, NJ. Two River Community Bank approved a \$910,000 loan contingent upon a 40% (\$364,000) Authority participation. The expansion will bring 10 of the existing employees to the NJ location and add six new full time employees within the next two years.
- 2) C & A Marketing Inc. or Nominee (P40997), located in Edison Township, Middlesex County, was incorporated in NY in 2003 and operates as a wholesale importer and distributor of photographic cameras and accessories. The Company's customers are comprised of retail stores throughout the US, and consumers via the Internet, primarily through Amazon stores. C & A seeks to relocate to a larger facility in Edison to expand the business. TD Bank, N.A. approved a \$10,000,000 loan contingent upon a 20% (\$2,000,000) Authority participation. The Company currently has 174 employees and plans to create 77 new positions within the next two years.

Stronger NJ Business Loan Program:

- 1) Compounding Engineering Solutions Inc. (P39192 & P39682), located in Clifton City, Passaic County, was founded in 1999, as a contract manufacturer that compounds a wide range of engineering thermoplastics. The Company was approved for a \$191,396 working capital loan and a \$50,000 forgivable loan to reimburse working capital expenses incurred after Superstorm Sandy.
- 2) Susskind & Almailah Eye Associates, P.A. (P40681), located in Brick Township, Ocean County, is a surgical optometry practice that was formed in 1962 and has five locations (Marlboro, Toms River, Whiting, Barnegat and Brick). The Company was approved for a \$648,038 working capital loan to reimburse working capital expenses associated with reopening the location after being closed due to the storm.

New Jersey Business Growth Fund - Modification:

- 1) Jersey GM Stevens Enterprises LLC and Table Top (P40740) are located in Gloucester Township, Camden County. Jersey GM Stevens Enterprises LLC is the real estate holding company for the project property. Table Top Fashions, Inc. was founded in 1988 as a linen rental supply and service company. In addition, the company manufactures its own linen tablecloths and fabric accessories for purchase, and rents the linens to restaurants, caterers, and country clubs, among others. PNC Bank approved a renewal of a \$496,670 bank loan with a 57 month, 25% guarantee of principal outstanding, not to exceed \$124,167. Original loan proceeds were used to purchase commercial real estate. All other terms and conditions of the original approval remain unchanged.

Small Business Fund Direct Loan Program - Modification:

- 1) BUF Health and Human Services Corporation, Inc. (P40410), located in Plainfield City, Union County, was approved for a \$500,000 direct term loan in March 2015. Under delegated authority, a change in the loan to value was approved. The LTV increased from 83% at time of approval to 99% prior to closing. All other terms and conditions of the original approval remain unchanged.

A handwritten signature in black ink, appearing to be 'DL', is written over a horizontal line.

Prepared by: D. Lawyer
DL/gvr

REAL ESTATE



MEMORANDUM

TO: Members of the Authority

FROM: Timothy J. Lizura, President and Chief Operating Officer

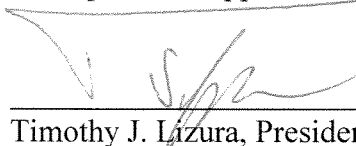
DATE: June 9, 2015

SUBJECT: Bid Challenge
Offer on the Technology Centre Expansion Site in North Brunswick, NJ

This memorandum is a recommendation to the Members of the New Jersey Economic Development Authority Board to accept the findings in the attached Hearing Officer Report regarding a Bid Challenge submitted by the Silverman Group, LLC to EDA's decision to enter into exclusive negotiations with KTR Capital Partners, LP pursuant to a solicitation by the Authority for offers to purchase the Technology Centre Expansion Site in North Brunswick, NJ. I have reviewed the attached and I concur with the recommendation.

Recommendation:

The Hearing Officer, with guidance from the Attorney General's Office and after having conducted a thorough review of the record pertaining to this solicitation, recommends the Members of the EDA Board accept the Hearing Officer's findings in rejecting the Bid Challenge submitted by the Silverman Group, LLC. Attached to this memo you will find the Hearing Officer's recommendation and the Silverman Group, LLC's appeal.



Timothy J. Lizura, President and COO

Prepared by: Marcus Saldutti

MEMORANDUM

TO: New Jersey Economic Development Authority Board

FROM: Marcus J. Saldutti, Esq; Senior Legislative Officer
NJEDA, Governance and Communications
Hearing Officer

RE: Bid Challenge
Offer on the Technology Centre Expansion Site in North
Brunswick, NJ

DATE: June 9, 2015

This is a recommendation to the Members of the New Jersey Economic Development Authority Board regarding a Bid Challenge received to the Board's resolution authorizing the EDA to enter into exclusive negotiations with KTR Capital Partners, LP (KTR) in response to a solicitation by the Authority for offers to purchase the Technology Centre Expansion Site (Site) in North Brunswick, NJ.

The Bid Challenge received from the Silverman Group, LLC (Silverman) through its attorney, John P. Inglesino, Esq. of the firm INGLESINO, WEBSTER, WYCISKALA & TAYLOR, LLC., alleges KTR's proposal is materially deficient and cannot be considered by the EDA.

After a thorough review of this matter, in response to the formal challenge initiated by Silverman, it is my finding that the Bid Challenge has no merit based on the facts and law.

BACKGROUND - REQUEST FOR PROPOSALS:

On June 18, 2014, the Authority through its retained broker, CBRE, issued an offering memorandum for bids to purchase the Technology Centre of New Jersey and the Site. The Authority subsequently issued a request for best and final offers for the Site (Solicitation) from interested parties. The request stated that all offers had to include the following in order to be considered: cover letter; price submittal; offer details; company information; and a disclosure of investment activities in Iran. The solicitation informed prospective purchasers that EDA would use the above criteria to evaluate offers so as to select a party with which to begin exclusive negotiations. Accordingly, the solicitation

advised that the selected party would have to deposit 5% of the proposed purchase price upon selection to enter into exclusive negotiation and the deposit would be fully refundable during the due diligence period.

Qualifying proposals were timely received by the January 22, 2015 deadline from KTR and Silverman. The Solicitation informed all prospective purchasers that proposals were to be evaluated based on the following: (i) purchase price, (ii) timing – due diligence and closing, (iii) financial evaluation of purchaser and ability to close, and (iv) contingencies (i.e. zoning, mortgage, etc.). No objections or inquiries regarding EDA's ability to sell the Site were received prior to the best and final offer due date.

Furthermore, in accordance with EDA procedures, both proposals were independently reviewed, evaluated and ranked by an Evaluation committee comprised of EDA Real Estate Division staff based on the above indicated criteria. KTR received a score of 90, while Silverman was scored at 75.33.

Both bidders' best and final offers exceeded the required minimum bid amount of \$5,355,000, with Silverman bidding \$5,950,000 and KTR bidding \$6,000,000. In addition, KTR proposed a maximum due diligence period of approximately 9 months to obtain approvals for development of the site while Silverman's maximum due diligence period extended beyond 28 months. As is the standard business practice, both offers were contingent on various due diligence items, such as records and property inspections and permit and zoning approvals.

The Evaluation Committee recommended the selection of the highest ranked firm, KTR, with whom to enter exclusive negotiations for the sale of the Site.

On February 26, 2015, the NJEDA Board, in Executive Session and acting upon the Evaluation Committee recommendation as presented in a Board memorandum prepared by Donna Sullivan, Director of EDA's Real Estate Division, approved EDA's entry into exclusive negotiations with KTR for purchase of the Site.

A Bid Challenge was received by letter dated April 7, 2015 from John P. Inglesino, Esq., attorney for the Silverman Group, LLC. A copy of said letter is attached hereto as **Exhibit A**.

APPOINTMENT OF HEARING OFFICER AND REQUESTS FOR ORAL ARGUMENT:

On April 21, 2015, I was appointed as the Hearing Officer for this matter and discussed the bid challenge with Silverman's counsel. In its formal protest letter and during discussions, Silverman requested an opportunity to make an oral argument to support its challenge. I have determined that an oral argument is not necessary to reach an informed decision regarding the merits of this challenge.

RESEARCH:

As Hearing Officer, I reviewed the following documents:

- 11/3/04 Policy of Title Insurance,
- EDA's request for Best and Final Offers,
- EDA's protest procedures,
- KTR Best and Final response letter and clarification,
- Silverman North Brunswick bid proposal and clarification,
- 1/16/2014 Appraisal of Tech Center Expansion Property,
- 2/12/15 Selection Committee memorandum and scoring matrix,
- 2/26/15 EDA Executive Session Resolution and Board memorandum,
- 3/16/15 EDA offer rejection correspondence to the Silverman Group, LLC,
- 3/16/15 EDA offer acceptance correspondence to KTR Capital Partners, LP, and
- 4/07/15 Silverman Group LLC, formal protest correspondence to EDA:
 - Exhibit A to Silverman protest: Silverman Group, LLC best and final offer,
 - Exhibit B to Silverman protest: 03/16/15 EDA offer rejection letter,
 - Exhibit C to Silverman protest: recorded easements.

In addition to reviewing the documents listed above, I also conducted further inquiry as needed to make my review complete and thorough. My findings are summarized as follows and address each of Silverman's challenge points.

CHALLENGE BY THE SILVERMAN GROUP:

Silverman's formal Bid Challenge contains two (2) points of challenge, summarized as follows:

Point I

Silverman's Argument:

"...a subsequent review of KTR's proposal revealed that it was without authority, and that final authority would be withheld until the completion of due diligence. In fact, the very language of KTR's proposal reveals that its terms are entirely contingent upon 'internal committee' approval and final internal approval upon successful completion of due diligence. Thus, KTR submitted a proposal to EDA without first securing the authorization of its partners to commit to the proposed purchase price, deposit, timeline, contingencies, and other terms. Without such fundamental internal approvals, KTR's terms are meaningless and cannot be given any real consideration. In other words, KTR's proposal is illusory on its face and should be disregarded."

In sum, Silverman alleges that KTR's best and final offer is not a final bona fide offer and should be disqualified because there are additional internal approvals referenced in its submission.

Analysis and Conclusion:

Whether a bid is disqualified is determined by the bid's response to the bid specifications contained in the public solicitation for bids. Hall v. New Jersey Sports & Exposition Auth., 295 N.J. Super. 629, 635 (App. Div. 1996); In re On-Line Games Contract, 279 N.J. Super. 566, 596 (App. Div. 1995). If the bid does not deviate from the material requirements of the public solicitation, "the bid must be deemed conforming." In re On-Line Games Contract, *supra*, 279 N.J. Super. At 596. Moreover, unless constrained otherwise by law, the State has the discretion to select a party with which to further negotiate final terms, as EDA did here, rather than to solicit a final, binding offer. See Wasserman's v. Twp. of Middletown, 137 N.J. 238, 244-47 (1994) (under 1966 statute, municipality could publicly advertise for bids to select party with which to negotiate lease); Jersey City v. N.J. Dep't of Env'tl. Prot., 227 N.J. Super. 5, 20 (App. Div. 1988) (DEP lessee's public advertisement for bids to select party with which to negotiate lease "is a technique particularly suitable for complex real estate development" "analogous to the [usual] State public bidding procedure" and is "fair and reasonable."). Thus, the statute governing the State's own procurement process, followed by the Department of Treasury, Division of Property Management and Construction for leases, allows for negotiation of the final terms and conditions, including price, with bidders if the bid solicitation states the State's ability to negotiate. N.J.S.A. 52:34-12(f).

Silverman's allegation that KTR's offer is deficient due to the requirement of additional internal approvals is without merit. The solicitation did not require final unconditional approval by the bidder, but instead informed all prospective purchasers that the bids would be used to select a party with which to enter into exclusive negotiations for the terms of the sale. Thus, EDA did not attach a sale agreement to the solicitation. Additionally, the solicitation required all closing contingencies be expressly listed in the offer. EDA did not impose any requirement as to how a bidder's final approval process needed to be conducted within the bidder's business organization.

Furthermore, Silverman's proposal acknowledged that EDA's solicitation did not request a binding offer but only an offer with which to start exclusive negotiation; the proposal specifically states it is only a "non-binding letter of interest" subject to negotiations and to further review and approval by Silverman. Silverman's proposal also contained several contingencies, which would also be subject to final internal approval as well. Both bidders were aware that EDA's solicitation was for offers to enter into exclusive negotiations in response to a solicitation by the Authority for offers to purchase the Technology Centre Expansion Site (Site) in North Brunswick, NJ.

In sum, Silverman's argument regarding this point is rejected as KTR's offer meets the requirements of the solicitation.

Point II

Argument:

“...Silverman owns property appurtenant to the Property and is the owner of several easements which traverse the Property for Silverman’s benefit and that of other neighboring property owners. These easements significantly restrict the ability of KTR, or any other developer besides Silverman, to develop the Property. The easements consist of reciprocal access and utility easements by and between Arken Realty, LLC (‘Arken’ –now owned by Silverman), Johnson & Johnson, KDM Properties, Corp., and Keller Graduate School of Management, Inc.”

“As the beneficial owner of these easements, Silverman has the ability to control the development of the Property. Clearly, even if KTR had submitted a bona fide offer, they would be forced to terminate the same in due diligence based on the foregoing easements.”

In sum, Silverman is arguing, since it is the beneficial owner of easements running through the property, it is the only viable entity to develop the Site.

Analysis and Conclusion:

Silverman’s argument is essentially a challenge to the validity of the solicitation itself. In general, an unsuccessful bidder has no standing to attack an award on the basis of illegal or improper solicitation. Camden Plaza Parking v. Camden, 16 N.J. 150, 158 (1954); Waszen v. Atlantic City, 1 N.J. 272, 276 (1949); Saturn Constr. Co. v. Bd. of Chosen Freeholders, 181 N.J. Super. 403, 407-08 (App. Div. 1981); cf. Autotote, Ltd. v. New Jersey Sports & Exposition Auth., 85 N.J. 363, 369 (1981) (“party is estopped from challenging the award of a contract which it actively sought through the same procedures it now attacks”). “The rationale of such a holding is that one cannot endeavor to take advantage of a contract to be awarded under illegal specifications and then, when unsuccessful, seek to have the contract set aside.” Waszen, supra, 1 N.J. at 276. In accord with such case law, the Department of Treasury, Division of Purchase and Property requires a challenge to a specification in a Request for Proposals to be submitted “in sufficient time to permit a review of the merits of the protest and to take appropriate action as may be necessary, prior to the scheduled deadline for proposal submission.” N.J.A.C. 17:12-3.2(b). Similarly, in the context of the Local Public Contracts Law, challenges to a bid specification filed less than three business days prior to the bid opening “shall be considered void and having no impact on the contracting unit or the award of a contract.” N.J.S.A. 40A:11-13(e).

Courts have addressed the merits of such a challenge to the solicitation after the bid opening only when “a decision on the public bidding issue will serve the public interest.” Autotote, supra, 85 N.J. at 369 (determining that statutory provision had “paucity of

judicial attention,” issue was “of substantial public importance,” and “large sums of public monies are at stake”).

As noted above, Silverman did not object to the fact that EDA proposed to solicit offers to sell the site. In addition, Silverman noted in the first page of its bid that the easements are merely a “development advantage”; which, in essence, amounts to the recognition by Silverman that other parties could bid and purchase the property subject to the easements.

Even if addressed on the merits, Silverman’s reliance on being the beneficial owner of easements on the property are a non-issue in that those facts are recorded public record freely available to any bidder. The offer and acceptance are a product of informed arms length negotiation and are commercially reasonable under the totality of the circumstances. In essence, Silverman is arguing that existence of the easements creates an undue risk to any subsequent purchaser.

More specifically, the existence of the easements were disclosed in the November 3, 2004 Policy of Title Insurance issued to EDA by the First American Title Insurance Company. Attached hereto as **Exhibit B**. In addition, page 27 of the January, 16, 2014 Tech Expansion Appraisal obtained by EDA expressly states with regard to the existence of easements: “None that would affect the utility or marketability of the subject property.” See page 27 of Appraisal attached hereto as **Exhibit C**.

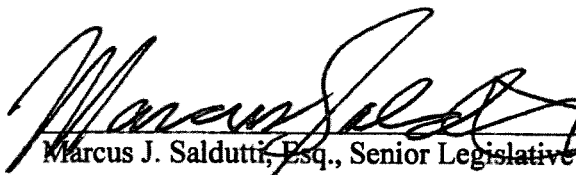
In addition, on page 3 of its letter of intent dated January 22, 2015, KTR acknowledged that the property could have easements and was willing to accept “good, marketable and insurable fee simple title . . . subject only to . . . easements and restrictions of record disclosed by a title report approved by Buyer.” See Letter of Intent attached hereto as **Exhibit D**.

Furthermore, extending Silverman’s easement assertion that it is the only viable bidder on the Site would put EDA in a position as a captive seller to Silverman, which clearly is not the case as title is marketable. Reading Silverman’s assertion to its logical conclusion would render the property inalienable to any other entity besides Silverman, putting EDA at an absurdly competitive disadvantage.

RECOMMENDATION:

Based on the above information and analysis, it is my finding that the Bid Challenge submitted by the Silverman Group, LLC is without merit and is denied.

Respectfully submitted:



Marcus J. Saldutti, Esq., Senior Legislative Officer – Designated Hearing Officer
NJEDA, Governance and Communications

Exhibit A

INGLESINO, WEBSTER, WYCISKALA & TAYLOR, LLC

ATTORNEYS AT LAW

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April 7, 2015

Via Electronic and Regular Mail

Donna T. Sullivan, Director
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New Jersey Economic Development Authority
36 West State Street
PO Box 990
Trenton, New Jersey 08625-0990

**Re: Technology Centre Expansion Site
North Brunswick, New Jersey
Our File No. 789-001**

Dear Ms. Sullivan,

This firm represents The Silverman Group, LLC ("Silverman") in the above-referenced matter. Please accept this letter as Silverman's challenge to the New Jersey Economic Development Authority ("EDA")'s award to KTR Capital Partners, LP ("KTR") regarding real property consisting of a +/- 24 acre tract located along Route 1 North in North Brunswick, New Jersey (the "Property"). For the following reasons, KTR's proposal is materially deficient and should be removed from the EDA's consideration.

In or around mid-January 2015, the EDA solicited "best and final offers" regarding the Property. The solicitation called for a minimum bid of \$5,355,000 and set forth several criteria for review, including: i) a cover letter; ii) the proposed purchase price; iii) offer details, including the timing of due diligence, milestone dates, proposed deposits, and contingencies; iv) company information, including history, financial condition, ability to close, current real estate holdings, and recent acquisitions; and v) required disclosures. On January 21, 2015, Silverman submitted its best and final offer, which included an all-cash purchase price of \$5,950,000.00 (no financing contingency) and reasonable timelines for completing due diligence and securing local approvals based on Silverman's vast experience and detailed knowledge of the North Brunswick, New Jersey approvals process. A true and accurate copy of Silverman's best and final offer with all required enclosures is attached hereto as **Exhibit A**.

As was set forth in its proposal, Silverman owns and manages property adjacent to the Property, encompassing an approximately 800,000 square foot industrial building and two additional office buildings totaling 125,000 square feet. Silverman also owns several easements that run through the Property which inure to the benefit of Silverman and other contiguous property owners. These easements significantly impact any future approvals and development of the Property.

On March 16, 2015, EDA notified Silverman that its proposal was not selected and that “the Proposal submitted by [KTR] is the most favorable based on the criteria outlined in the Request for Best and Final Offers.” A true and accurate copy of the EDA’s March 16, 2015 letter is attached hereto as **Exhibit B**.

However, a subsequent review of KTR’s proposal revealed that it was without authority, and that final authority would be withheld until the completion of due diligence. In fact, the very language of KTR’s proposal reveals that its terms are entirely contingent upon “internal committee” approval and final internal approval upon successful completion of due diligence.¹ Thus, KTR submitted a proposal to EDA without first securing the authorization of its partners to commit to the proposed purchase price, deposit, timeline, contingencies, and other terms. Without such fundamental internal approvals, KTR’s terms are meaningless and cannot be given any real consideration. In other words, KTR’s proposal is illusory on its face and should be disregarded.

On the other hand, the terms of Silverman’s proposal were fully authorized and the funds for the entire proposed purchase price were committed and segregated into a sub-account at JP Morgan. See Exhibit A, Letter from Scott Fisher, CFO to Kevin Welsh and Brian Schulz dated February 10, 2015. All internal authority for the deal has already been granted. The due diligence and local approvals timelines were based on Silverman’s real industry experience and plan to develop the Property to its ultimate potential – a flex industrial development – which would also enhance the use and utility of the existing Technology Centre property. See Exhibit A. Silverman put its name, reputation, and hard cash on the line in a comprehensive and competitive proposal, without the need for any speculative internal approvals by unknown committees. Contrary to KTR’s illusory proposal, Silverman’s proposal is a real bona fide offer with the funds already committed and in place. Accordingly, we respectfully request that the EDA remove KTR’s proposal from consideration.

¹ Although Silverman attempted to secure a copy of KTR’s proposal, EDA did not produce it citing internal restrictions on the release of such documents. Accordingly, Silverman representatives reviewed KTR’s proposal in person at EDA’s offices and no copy of said proposal is available for submission herewith.

Moreover, Silverman owns property appurtenant to the Property and is the owner of several easements which traverse the Property for Silverman's benefit and that of other neighboring property owners. These easements significantly restrict the ability of KTR, or any other developer besides Silverman, to develop the Property. The easements consist of reciprocal access and utility easements by and between Arken Realty, LLC ("Arken" - now owned by Silverman), Johnson & Johnson, DKM Properties Corp., and Keller Graduate School of Management, Inc.

By way of Restated and Amended Reciprocal Easement and Utility Agreement dated March 25, 2005 (the "Agreement"), the aforementioned property owners granted to each other non-exclusive easements in, over, and across their sites (located adjacent to or near the Property) for purposes of access in and around the appurtenant properties and to Route 1. A true and accurate copy of the Agreement and easement map are attached hereto as **Exhibit C**. Arken also agreed to supply electricity, steam, water, and sewer services to the surrounding properties from the substation, steam plant, water, and sewer lines located on and across its property. The lines carrying these services and their associated easements also extend across the Property and, depending on the ultimate design of the development to occur on the Property, could require that the lines and easements be relocated.

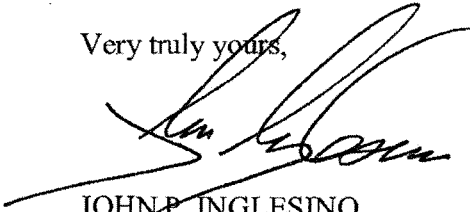
As the beneficial owner of these easements, Silverman has the ability to control the development of the Property. Clearly, even if KTR had submitted a bona fide offer, they would be forced to terminate the same in due diligence based on the foregoing easements. This could deprive EDA of EDA's anticipated value of the Property if it were forced to re-bid. Notwithstanding Silverman's ability to significantly affect the development of the Property via said easements, Silverman is still willing to stand by its offer, which is \$595,000 above the minimum price.

As is set forth above, KTR's bid is illusory and, even if it were not illusory, KTR would be forced to terminate in due diligence because the said easements on the Property, which inure to Silverman's benefit, would preclude KTR from developing the Property. By contrast, Silverman has made a real bona fide offer with the funds already allocated to close. The easements which will prevent KTR from developing the Property inure to Silverman's benefit and should not, therefore, impede Silverman's ability to develop the Property. Such makes Silverman the only viable buyer of this Property.

Pursuant to the procedures set forth in your correspondence of March 20, 2015, Silverman hereby requests an oral presentation for purposes of further explaining and clarifying the issues set forth herein. Thank you for your consideration.

Donna T. Sullivan, Director
April 7, 2015
Page 4

Very truly yours,



JOHN P. INGLESINO

cc: (via Electronic and Regular Mail w/ Enclosures)
Kevin Welsh, Senior Vice President, CBRE
John DiCola, KTR Capital Partners

Exhibit B

Form No. FANJ-91
NJRB 1-11
ALTA Owners Policy (10-17-92)

Nº 101382524 NJO

POLICY OF TITLE INSURANCE



INCORPORATED

First American Title Insurance Company

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

First American Title Insurance Company

BY

Gary L. Kennolt

DATE OF POLICY

ATTEST

Mark R. Arnesen

DATE OF POLICY

BY

Repisgar

DATE OF POLICY

**DUPLICATE
ORIGINAL**

Issued with Policy No.

FEE POLICY

SCHEDULE A

POLICY NO. : **101382524 NJO**

File No.: **TC-32755**

Your File No.:

Amount of Insurance: **\$3,675,000.00**

Premium : **Standard Rate**

Date of Policy: **November 03, 2004**

1. Name of Insured:

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY,
an instrumentality of the State of New Jersey**

2. The estate or interest in the land described herein which is covered by this policy is **Fee Simple** and is at Date of Policy vested in:

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY, an instrumentality of the State of New Jersey under Deed from DKM-ATLANTIC TWO CORP., a Corporation of the State of New Jersey, dated 10/25/2004, recorded 11/03/2004 in Deed Book 5404, Page 752 AND DKM PROPERTIES CORP. by deed dated 10/25/2004, recorded 11/03/2004 in Deed Book 5404, Page 758 in the Middlesex County Clerk's/Register's Office.

3. The land referred to in this policy is described in the said instrument is situated in **Township of North Brunswick, County of Middlesex State of New Jersey** and is identified as follows:

Being known as Tax Block(s) **252**, Lot(s) **1.03 & 1.06**, **Township of North Brunswick, County of Middlesex** Tax Map. Being more particularly described as ATTACHED hereto.



83 Morris Street, P.O. Box 675, New Brunswick, NJ 08903
(732) 846-0600 • Fax: (732) 846-6734

**DUPLICATE
ORIGINAL**

FEE POLICY

DESCRIPTION

POLICY NO. : **101382524 NJO**

File No.: **TC-32755**

Your File NO.:

All that certain Lot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the **Township of North Brunswick**, County of **Middlesex** State of **New Jersey**.

SEE SURVEYOR'S DESCRIPTION ATTACHED.

Together with the rights and obligations contained in Deed Book 3608, Page 534, as amended in Deed Book 4224, Page 624 and Deed Book 3608, Page 541, as amended in Deed Book 4224, Page 593 and Deed Book 4224, Page 608.

NOTE: Being Lot(s) **1.03 & 1.06**, Block **252**, Tax Map of the **Township of North Brunswick**, County of **Middlesex**.

**DUPLICATE
ORIGINAL**

EDA



JOHN H. ALLGAIR, 1983-01
 DAVID J. SAMUEL, P.E., P.P.
 JOHN J. STEFANI, P.E., L.S., P.P.
 JAY B. CORNELL, P.E., P.P.
 MICHAEL J. McCLELLAND, P.E., P.P.
 GREGORY R. VALES, P.E., P.P.

TIMOTHY W. GILLEN, P.E., P.P.
 BRUCE M. KOCH, P.E., P.P.
 ERNEST J. PETERS, JR., P.E., P.P.

August 16, 2004
 File No. P-MC-00063-01
 Proposed Lot 1.06, Block 252

Description of Proposed Lot 1.06, Block 252
Being a portion of Lot 1.04, Block 252
Lands N/F DKM Properties Corp.
Township of North Brunswick
Middlesex County, New Jersey

All that certain tract or parcel of land located in the Township of North Brunswick, County of Middlesex, New Jersey, bounded and described as follows:

Beginning at a point, said point being the intersection of the common line between Lots 1.02 and 1.04, Block 252, with the southeasterly line of Lot 6.01, Block 252, and from said beginning point running:

- 1) Along said common line with Lot 1.02, Block 252, South 19° 55' 41" East, a distance of 1,137.57 feet to a point in the northwesterly line of Lot 7, Block 252, N/F PSE&G, thence
- 2) Along said northwesterly line of Lot 7, Block 252, South 40° 15' 39" West, a distance of 92.78 feet to a point, thence

Through Lot 1.04, Block 252, along the proposed subdivision lines, the following three (3) courses:

- 3) North 80° 56' 57" West, a distance of 933.17 feet to a point
- 4) North 56° 48' 39" West, a distance of 453.56 feet to a point, thence
- 5) North 17° 59' 41" West, a distance of 487.88 feet to a point in the southerly right-of-way line of U.S. Route No. 1, thence

Along said southerly right-of-way line of U.S. Route No. 1, the following three (3) courses:

- 6) North 70° 08' 02" East, a distance of 319.88 feet to a point, said point being witnessed by a concrete monument found, thence
- 7) North 68° 59' 50" East, a distance of 50.02 feet to a point, said point being witnessed by a concrete monument found, thence
- 8) North 70° 08' 00" East, a distance of 195.30 feet to a point in the southerly line of Lot 6.01, Block 252, thence

**DUPLICATE
ORIGINAL**





August 16, 2004
File No. P-MC-00063-01
Proposed Lot 1.06, Block 252

Along said southerly and southeasterly line of Lot 6.01, Block 252, the following four (4) courses:

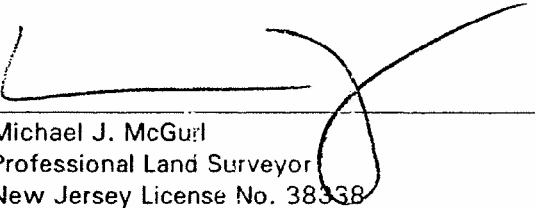
- 9) South 75° 18' 05" East, a distance of 349.83 feet to a point, thence
- 10) North 74° 50' 58" East, a distance of 99.79 feet to a point, thence
- 11) North 44° 28' 35" East, a distance of 180.00 feet to a point, thence
- 12) North 55° 02' 28" East, a distance of 39.10 feet to the point and place of beginning.

Said description of proposed Lot 1.06 in Block 252 containing 1,079,314 Square Feet or 24.778 Acres, more or less.

Said description of proposed Lot 1.06 in Block 252 having been drawn in accordance with a certain map entitled "Survey & Subdivision of Lot 1.04, Block 252, N/F DKM Properties Corp., prepared for Middlesex County Improvement Authority, Situated in the Township of North Brunswick, Middlesex County, New Jersey", sheet 1 of 1, prepared by CME Associates, dated May 12, 2003 and revised through June 30, 2004.

Said described lands, a portion of Lot 1.04 in Block 252, may be subject to such facts and conditions, which would be disclosed, in a search of the public record beyond that which was obtained for the issuance of the title binder.

Said described lands being known as a portion of Lot 1.04 in Block 252, as shown on the official Tax Maps of the Township of North Brunswick.


Michael J. McGurl
Professional Land Surveyor
New Jersey License No. 38338

Proposed Lot 1.06 Block 252





JOHN M. ALLGAIR, 1983-01
 DAVID J. SAMUEL, P.E., P.P.
 JOHN J. STEFANI, P.E., L.S., P.P.
 JAY B. CORNELL, P.E., P.P.
 MICHAEL J. MCCLELLAND, P.E., P.P.
 GREGORY R. VALES, P.E., P.P.

TIMOTHY W. GILLEN, P.E., P.P.
 BRUCE M. KOCH, P.E., P.P.
 ERNEST J. PETERS, JR., P.E., P.P.

August 16, 2004
 File No. P-MC-00063-01
 Lot 1.03, Block 252

**Description of Lot 1.03 Block 252
 Lands N/F DKM Properties Corp.
 Township of North Brunswick
 Middlesex County, New Jersey**

All that certain tract or parcel of land located in the Township of North Brunswick, County of Middlesex, New Jersey, bounded and described as follows:

Beginning at a point, said point being the intersection of the common line between Lots 1.02 and 1.03, Block 252, with the southeasterly line of Lot 6.01, Block 252, and from said beginning point running:

- 1) Along said southeasterly line of Lot 6.01, Block 252, North 70° 04' 18" East, a distance of 76.52 feet to a point in the southwesterly line of Lot 6.01, Block 252, thence
- 2) Along said southwesterly line of Lot 6.01, Block 252, South 33° 43' 18" East, a distance of 576.05 feet to a point in the northwesterly line of Lot 6.01, Block 252, thence
- 3) Along said northwesterly line of Lot 6.01, Block 252, South 31° 11' 40" West, a distance of 274.70 feet to a point in the aforementioned common line with Lot 1.02, Block 252, thence
- 4) Along said common line with Lot 1.02, Block 252, North 19° 55' 45" West, a distance of 731.85 feet to the point and place of beginning.

Said description of Lot 1.03 in Block 252 containing 99,659 Square Feet or 2.288 Acres, more or less.

Said description of Lot 1.03 in Block 252 having been drawn in accordance with a certain map entitled "Survey & Subdivision of Lot 1.04, Block 252, N/F DKM Properties Corp., prepared for Middlesex County Improvement Authority, Situated in the Township of North Brunswick, Middlesex County, New Jersey", sheet 1 of 1, prepared by CME Associates, dated May 12, 2003 and revised through June 30, 2004.

Said described lands may be subject to such facts and conditions, which would be disclosed, in a search of the public record beyond that which was obtained for the issuance of the title binder.

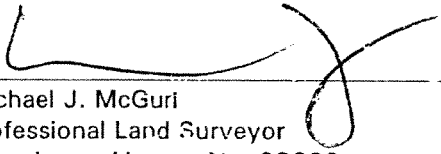
**DUPLICATE
 ORIGINAL**





August 16, 2004
File No. P-MC-00063-01
Lot 1.03, Block 252

Said described lands being known as all of Lot 1.03 in Block 252, as shown on the official Tax Maps of the Township of North Brunswick.


Michael J. McGuri
Professional Land Surveyor
New Jersey License No. 38338

Proposed Lot 1.03 Block 252



FEE POLICY

SCHEDULE B

POLICY NO. : 101382524 NJO

File No.: TC-32755

In addition to the Exclusions, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Encroachments, overlaps, boundary line disputes, and any other matters which would be disclosed by an accurate survey and inspection of the premises.
2. Land taxes paid through 3rd Quarter 2004. Subsequent quarters are not yet due and payable.
3. Sub-surface conditions not disclosed by an instrument recorded in the County Clerk's/Register's Office.
4. Slope and drainage rights of the State of New Jersey as set forth in Deed Book 965, Page 14; Deed Book 1000, Page 382; Deed Book 1022, Page 338; Deed Book 949, Page 554; Deed Book 788, Page 5; Deed Book 2258, Page 577 and Deed Book 2737, Page 1124.
5. Developer's Agreement in Deed Book 4225, Page 1, as amended By Assignment and Assumption recorded 11/3/2004 in Deed Book 5404, Page 730.
6. Easements as contained in Deed Book 2544, Page 1192 to Public Service Electric and Gas Company.
7. Easement to the Borough of Milltown in Deed Book 2829, Page 51.
8. Restated and Amended Easement Agreement in Deed Book 3608, Page 534, as amended in Deed Book 4224, Page 624, amended by First Amendment to Consent Agreement recorded 11/3/2004 in Deed Book 5404, Page 708.
9. Restated and Amended Easement Agreement in Deed Book 3608, Page 541, as amended in Deed Book 4224, Page 593; Deed Book 4224, Page 608 and Consent Agreement in Deed Book 4224, Page 665.
10. Easement Agreement in Deed Book 3608, Page 548, as amended by Consent Agreement in Deed Book 4224, Page 632.
11. Water Main Easements to The Borough of Milltown in Deed Book 4009, Page 125 and Deed Book 4011, Page 19.

CONTINUED.....

**DUPLICATE
ORIGINAL**

FEE POLICY

SCHEDULE B

POLICY NO. : 101382524 NJO
File No.: TC-32755

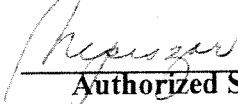
12. Restated and Amended Reciprocal Easement and Utility Agreement in Deed Book 4224, Page 730, as amended in Deed Book 4283, Page 584.
13. Grants of Storm Waterline Easements in Deed Book 4338, Page 454 and Deed Book 4294, Page 571.
14. Waterline Extension Easements to The Township of North Brunswick in Deed Book 4228, Page 175; Deed Book 4228, Page 167; Deed Book 4228, Page 160 and Deed Book 4228, Page 147.
15. Sanitary Sewer Easement in Deed Book 4224, Page 717.
16. Detention Basin Easement in Deed Book 4224, Page 709.
17. Easement to Public Service Electric and Gas Company and Bell Atlantic N.J., Inc. in Deed Book 4313, Page 365.



**Trans-County
Title Agency,
LLC**

83 Morris Street, P.O. Box 675, New Brunswick, NJ 08903
(732) 846-0600 • Fax: (732) 846-6734

Norma C. Pizar



Authorized Signatory

**DUPLICATE
ORIGINAL**

policy in favor of an insured only so long as the insured ins an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall a liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. The policy shall not continue in force in favor of any purchaser of the insured of either (i) an estate or interest in the land, or an indebtedness secured by a purchase money mortgage in favor of the insured.

NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case of knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest, as insured, is affected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that the insured to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of prejudice.

DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE.

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which the insured matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. The Company shall exercise its rights under this paragraph, shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to do, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

i. PROOF OF LOSS OR DAMAGE.

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes

Upon the exercise by the Company of this option, all liability and obligations to the insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

(i) To pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) To pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs (b)(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

7. DETERMINATION, EXTENT OF LIABILITY AND COINSURANCE.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A; or, (ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the Amount of Insurance stated in Schedule A at the Date of Policy is less than 80 percent of the value of the insured estate or interest or the full consideration paid for the land, whichever is less, or if subsequent to the Date of Policy an improvement is erected on the land which increases the value of the insured estate or interest by at least 20 percent over the Amount of Insurance stated in Schedule A, then this Policy is subject to the following:

(i) where no subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that the amount of insurance at Date of Policy bears to the total value of the insured estate or interest at Date of Policy; or (ii) where a subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that 120 percent of the Amount of Insurance stated in Schedule A bears to the sum of the Amount of Insurance stated in Schedule A and the amount expended for the improvement.

The provisions of this paragraph shall not apply to costs, attorneys' fees and expenses for which the Company is liable under this policy, and shall only apply to that portion of any loss which exceeds, in the aggregate, 10 percent of the Amount of Insurance stated in Schedule A.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

8. APPORTIONMENT.

If the land described in Schedule (A)(C) consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

9. LIMITATION OF LIABILITY.

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(b) The Company's Rights Against non-insured Obligors.

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

14. ARBITRATION.

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

16. SEVERABILITY.

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

17. NOTICES, WHERE SENT.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at 114 East Fifth Street, Santa Ana, California 92701, or to the office which issued this policy.

DUPLICATE
ORIGINAL

FIRST AMERICAN



First American Title Insurance Company

DUPLICATE
ORIGINAL

**POLICY
OF
TITLE
INSURANCE**



Exhibit C

Site Description and Analysis (continued)

Site Contamination:	We did not observe any readily apparent environmental contamination. However, we did not make and are not qualified to make an environmental study of the site. We reserve the right to amend our report if more information about site contamination becomes available.
Existing Easements:	None that would affect the utility or marketability of the subject property.
Conclusion:	The subject site is a well-positioned office location with superior highway access, ample land area, and good visibility. The area's infrastructure is designed for modern laboratory/research uses. Surrounding land uses are compatible and there are no known detrimental uses that would impact upon the marketability or utility of the subject site.

Exhibit D



Section II: Letter of Intent

January 22, 2015

Brian Schulz
Vice President
CBRE
250 Pehle Ave
Park 80 West, Plaza 2
Saddle Brook, NJ 07663

CC: Kevin Welsh, CBRE

RE: Technology Centre Expansion Site, North Brunswick, NJ

Dear Brian:

This letter of intent sets forth the general terms and conditions under which KTR Capital Partners, LP or assigns ("KTR" or the "Buyer"), would be prepared to enter into a Purchase and Sale Agreement (the "Purchase Agreement") with the New Jersey Economic Development Authority (the "Seller") for the property described below (the "Property").

Property: Good and marketable fee simple title in the +/- 27 acres, known as the Technology Centre Expansion Site, Block 252, Lots 1.03 and 1.06, located in North Brunswick, NJ (the "Property").

Purchase Price: Total consideration of \$6,000,000 (Six Million Dollars) plus or minus customary pro-rations paid in cash at the closing of the transaction ("Closing"). This offer contemplates a minimum Developable Building Area of 306,000 square feet of industrial development. Developable Building Area shall be defined as a commercially reasonable development plan that conforms with existing zoning codes and county and state regulatory standards and incorporates modern specifications for industrial development. Buyer's consultant, Langan Engineering, has performed preliminary due diligence on the Property and determined that a Developable Building Area of 306,000 square feet is achievable based on site configuration, anticipated detention requirements, and building setbacks.

Due Diligence: Buyer shall have sixty (60) days from the execution of a Purchase Agreement and the receipt of the due diligence items listed in Exhibit A to perform its Due Diligence ("Due Diligence Period").

Seller shall provide Buyer, its authorized agents and representatives with access during the Due Diligence Period to inspect the Property and conduct such investigations as Buyer deems appropriate including, without limitation, geotechnical soil borings, engineering studies, and environmental studies. Buyer agrees to indemnify Seller and

hold Seller harmless from any loss, damage, claim or liability for bodily injury or property damage caused by such testing.

In addition, Seller agrees to provide Buyer, its authorized agents and representatives true and complete copies of all existing Property documentation due diligence items and documents including but not limited to, all working drawings, plans and specifications, surveys, appraisals, traffic studies, zoning reports and requirements, geotechnical soils reports, environmental reports, existing service contracts, and or any other relevant documents related to the Property to the extent they are available.

Site Plan/Zoning:

This offer is contingent upon a change in zoning from O-R Office Research District to I-2 Industrial District. Seller and Buyer shall diligently cooperate in obtaining a rezoning and final site plan approval to allow for the development of approximately 306,000 square feet of industrial warehouse space on the Property (the "Development Approvals"). From the end of the Due Diligence Period, the Buyer shall have one hundred and twenty (120) days to obtain the Development Approvals (the "Development Approval Period"). Provided the Buyer is proceeding diligently and in good faith to obtain the Development Approvals and provided the process is progressing in a commercially reasonable fashion, then the Development Approval Period shall automatically be extended by thirty (30) day increments for up to 3 consecutive periods until Development Approvals are obtained and any statutory appeal period has expired.

Deposit:

Upon the full execution and delivery of the Purchase Agreement, Buyer will deliver an earnest money deposit equal to \$400,000 (Four Hundred Thousand Dollars) in cash to Buyer's escrow agent. The Deposit shall be held in an interest bearing escrow account and shall be fully refundable to Buyer until the end of the Due Diligence Period.

At Closing, the Deposit along with any accrued interest, will be applied against the Purchase Price and constitute liquidated damages to Seller in the event of a breach of the Purchase Agreement by Buyer. The Deposit, along with any accrued interest, shall be fully refunded to Buyer in the event of a breach of the Purchase Agreement by Seller or a failure of any contingencies contained in the Purchase Agreement.

COAH Fee:

This offer contemplates Buyer paying a Council on Affordable Housing ("COAH") fee totaling 2.5% of the total stabilized value of the project. The recent reinstatement of the COAH fee through a conditional veto from the Governor has had a meaningful impact on the overall development budget that Seller should be aware of when considering the terms and conditions of any offer.

**Notice of Intent
to Proceed:**

Upon expiration of Buyer's Due Diligence Period, Buyer shall provide to Seller a notice of its intent to proceed to Closing. If Buyer does not provide this notice to Seller it shall be deemed that Buyer will not proceed with the transaction and the Deposit shall be refunded.

- Closing:** Following the expiration of the Due Diligence Period and the completion of the seller deliveries and provided that Buyer has given notice that it will proceed to closing under the Purchase Agreement, Closing shall occur within ten (10) business days and receipt by the Buyer of the Closing documents, including final title and survey documents.
- Purchase Agreement:** Upon execution of a Letter of Intent, Buyer and Seller shall proceed diligently and in good faith towards the execution of a Purchase Agreement. In addition to the outlined terms contained in the Letter of Intent, the Purchase Agreement shall contain customary conditions and provisions negotiated between Buyer and Seller and shall be valid only when executed and delivered by both parties.
- Survey, Title:** At the Closing, Seller will deliver to Buyer a recordable bargain and sale deed with covenants against grantor's acts conveying to Buyer good, marketable and insurable fee simple title to the Property, free and clear of all liens and encumbrances, subject only to real estate taxes for the current calendar year, which are a lien on the Property, but are not yet due and payable, and easements and restrictions of record disclosed by a title report approved by Buyer. Such title so conveyed by Seller shall be insurable under a standard ALTA Owner's Policy with a reputable title company, with such endorsements as shall be required by Buyer to obtain good, marketable and insurable fee simple title as summarized above. The cost of any such title insurance policy shall be paid solely by Buyer.
- Buyer shall be responsible for obtaining an updated ALTA / ASCM 'As-built' survey prepared by a registered surveyor acceptable to the Buyer and the title company.
- Closing Costs:** Seller will bear its specific costs associated with the transaction including its legal costs and any brokerage fees associated with the transaction. Buyer will bear its specific costs associated with the transaction including its own due diligence costs, the cost of the title insurance policy, and its own legal costs. Buyer and Seller shall share equally the fees of the escrow agent. All other related Closing Costs, including any applicable recordation and transfer taxes, shall be borne by the respective parties in a manner customary to local real estate transfers. All operating costs will be prorated at Closing with the day of Closing belonging to the Buyer. Real estate taxes are to be prorated on an accrual basis.
- Broker:** Seller will be responsible for paying a broker commission to CBRE pursuant to a separate agreement. Each party agrees to indemnify the other from any other broker claims by or through the indemnifying party.
- Exclusivity:** Seller agrees (a) to discontinue active marketing of the Property and any current negotiations for the sale of the Property, (b) not to enter into any new negotiations with any third parties for the sale of the Property, and (c) not to solicit purchase offers for the Property from other parties from the date this Letter is countersigned unless Buyer does not proceed to Closing on or before the expiration of the Due Diligence Period. This paragraph constitutes the binding obligation of the Seller until the Purchase Agreement has been executed and delivered by both parties.

**Approval Process /
Financing:**

KTR Capital Partners, LP as general partner for KTR Industrial Fund III LP (the "Fund") retains full discretion over the Fund investments. This proposed transaction has received preliminary approval from its investment committee. Final approval will be subject to the successful completion of Due Diligence. ***Furthermore, KTR is an all cash buyer and there is no debt financing contingency associated with this offer.***

Assignment:

Buyer shall have the right, without Seller consent, to assign the Purchase Agreement to an entity controlled or owned by Buyer.

Confidentiality:

Both Seller and Buyer agree to keep the Purchase Price and the terms of the transaction confidential and commit not to disclose such information to third parties without the prior consent of the other party. However, both parties will have the right to disclose such terms to their accountants and attorneys, and further, Buyer will have the right to disclose them to its lenders or investors.

Buyer Contact:

All correspondence related to the Offer shall be directed to:

Michael Coppola
Vice President - Investments
KTR Capital Partners
E: mcoppola@ktrcapital.com
P: 212-710-5075
F: 212-710-5061

140 Broadway, 43rd Floor
New York, NY 10005

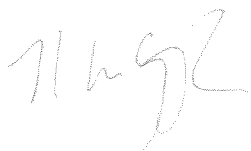
KTR Capital Partners, LP ("KTR") is a private equity real estate investment, development and operating company focused exclusively on the industrial property sector. Headquartered in New York City with offices in Philadelphia, Chicago, Dallas, Las Vegas, Los Angeles, Miami and Seattle, KTR has an 88 person platform that manages a series of discretionary value-add investment funds that target opportunities throughout major markets in North America. KTR funds currently own a portfolio of approximately 65 million square feet across North America and provide nearly \$7.0 billion of investment capacity. This property will be acquired by KIF III, a \$1.2 billion (equity), discretionary investment fund that closed in July 2013 with a remaining available capital capacity of approximately \$1.5 billion with leverage. All KTR funds are incorporated in Delaware.

The purpose of this Letter is to set forth the present mutual intent of Buyer and Seller to negotiate and attempt to enter into a Purchase Agreement. Neither Buyer nor Seller shall be legally bound to purchase or sell the Property unless and until a Purchase Agreement containing terms, conditions, and provisions satisfactory to both Buyer and Seller has been executed and delivered by both parties. Notwithstanding the foregoing, the parties acknowledge and agree that the provisions of this paragraph and the Confidentiality and Exclusivity section above will be binding and enforceable against the parties. The terms of a fully-executed and delivered Purchase Agreement shall fully supersede the terms of this Letter. Notwithstanding that either or both parties may expend substantial efforts and sums in anticipation of entering into a Purchase Agreement, the parties acknowledge that in no event will this Letter be construed as an enforceable contract to sell or purchase the property and that each party accepts the risk that no such contract will be executed.

If you have any questions, please do not hesitate to call. We look forward to working with you on this matter.

Sincerely,

KTR Capital Partners, LP



Michael W. Coppola
Vice President – Investments

Agreed and Accepted:

By: _____

Title: _____

Date: _____

cc: KTR Capital Partners Investment Committee
Kevin Welsh, CBRE

MEMORANDUM

TO: Members of the Authority

FROM: Timothy J. Lizura
President/Chief Operating Officer

RE: Property Access Agreement
Technology Centre of New Jersey
Tech Expansion Site
North Brunswick, New Jersey

DATE: June 9, 2015

Summary:

I am requesting the Members' approval to enter into a Property Access Agreement with Avery Dennison for a two (2) year term in order to continue to perform its environmental remedial monitoring of Authority-owned property at the Technology Centre of New Jersey and Tech Expansion sites with the option to extend the Property Access Agreement, if necessary, for two (2) one year extension periods.

Background:

In 2013, the NJEDA was contacted by adjacent property owner, Avery Dennison Corporation, also known as the "Former Permacel Facility" located 621 U.S. Route 1 South, Block 194/Lot 29.01, requesting access to the NJEDA's properties at the Technology Centre of New Jersey and Tech Expansion, in North Brunswick, New Jersey (hereinafter "Property"). Access to the Property was granted to Avery Dennison and its agents under the Real Estate Division's Delegated Authority for the purpose of allowing Avery Dennison to perform ongoing investigations and remediation of the existing (past and present) environmental conditions at the Former Permacel Facility as required by the New Jersey Department of Environmental Protection ("NJDEP") Technical Requirements for Site Remediation (N.J.A.C. 7:26E-1.4).

Historically speaking, since at least 1992 the adjacent property owner has been performing soil, ground water, and vapor intrusion investigations, as well as soil and ground water remediation activities under the supervision of either the NJDEP (Program Interest No.: 008529 / Case Tracking No.: ISRA E88595) or a New Jersey Licensed Site Remediation Professional ("LSRP") (Mr. Kenneth Goldstein, PE, Ransom Environmental, Inc.) in response to the Areas Of Environmental Concern that have been identified as a result of the adjacent property owner's use of the property.

In 2013 Avery Dennison and its agents, The Johnson Company and its subcontractors, were granted access to the Property to install temporary and permanent ground water sampling/monitoring probes and wells, as well as borings through the floor slab of the Merial Building to sample for soil vapors. Throughout the remainder 2013 and into June 2014, Avery Dennison requested access the Property to collect samples from the borings, probes and wells. NJEDA has been advised by Avery Dennison's LSRP that several contaminants of concern, metals including nickel and beryllium, have migrated from the Former Permacel Facility onto the Property in the ground water, below the ground surface. NJEDA has been further advised that the concentrations of nickel and beryllium detected in the ground water samples collected within NJEDA's Property marginally exceed the applicable NJDEP Groundwater Quality Criteria ("GWQS"), and that the presumed remedy is monitored natural attenuation with monitoring performed by Avery Dennison into the future until such time that the concentrations are found to be acceptable through natural attenuation.

Avery Dennison will continue to indemnify the Authority and provide insurance coverage naming the Authority as an additional insured. Copies of reports generated by ADs investigation will be shared with the Authority. The attached form of Property Access Agreement is in substantially final form. The final terms of the Property Access Agreement will be subject to the approval of the President/Chief Operating Officer and the Attorney General's Office.

Recommendation:

In summary, I am requesting the Members' approval to execute a Property Access Agreement with Avery Dennison Corporation for two (2) years, on terms acceptable to the Chief Executive Officer, President/Chief Operating Officer and the Attorney General's Office with an option to extend, if necessary, for two (2) additional one year periods through February 1, 2019 as authorized under the Real Estate Division Operating Authority.



Timothy J. Lizura
President/Chief Operating Officer

Prepared by: Thomas Catapano

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PROPERTY ACCESS AGREEMENT

THIS PROPERTY ACCESS AGREEMENT ("Agreement"), effective as of the 2nd day of February, 2015 ("Effective Date"), is entered into by and between AVERY DENNISON CORPORATION, with offices at 8080 Norton Parkway, Mentor, OH ("ADC"), and the NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY ("NJEDA") an Instrumentality of the State of New Jersey, with offices at 36 West State Street, Trenton, NJ 08625-0990, collectively the "Parties."

In consideration of the mutual promises and covenants herein, the Parties agree as follows:

1. Access Rights

NJEDA hereby grants ADC, its affiliates, agents, contractors, and subcontractors and their respective employees (collectively, "Avery Personnel"), authorization to enter and access a portion of NJEDA's property located at 675 US Route 1, North Brunswick, NJ. Specifically, with the exception of: (i) the approximately 6.5 acres of NJEDA's property on Block 194, Lot 28 and Block 194, Lot 29.03 that is leased to Merial Limited (the "Merial Leasehold"); and (ii) the portion of Block 194, Lot 29.03 and Block 252, Lot 1.06 that was conveyed to NJ Department of Transportation, ADC Personnel may, for the purpose of conducting the "Site Activities" described in Section 4 below, access the following properties, which hereinafter are collectively referred to as the "Site":

- a) Block 194, Lot 29.03, North Brunswick Township, Middlesex County, NJ;
- b) Block 252, Lot 1.06, North Brunswick Township, Middlesex County, NJ; and
- c) Block 194, Lot 28, North Brunswick Township, Middlesex County, NJ.

The Site expressly excludes the Merial Leasehold. Also, the Parties acknowledge that the Site does not include any adjoining land owned by the New Jersey Department of Transportation.

2. Access to Merial Leasehold

If ADC requires access to conduct Site Activities on the Merial Leasehold, ADC will enter into a separate property access agreement with Merial Limited. The NJEDA will give reasonable consent to a property access agreement between ADC and Merial Limited provided that the NJEDA is given a fully signed copy of the property access agreement between ADC and Merial Limited.

3. Site Utilities

ADC shall be responsible for identifying the location of all utility lines in the areas where the Site Activities are to be performed. NJEDA may provide to ADC any existing survey, drawing or site plans that locate the utility lines on the Site. ADC shall also be responsible for any disruption of utility service caused by the Site Activities described in Section 4 below.

4. Site Activities

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The Site Activities that may be undertaken by ADC Personnel at the Site, and for which access to the Site is granted, are those activities which, to the satisfaction of the New Jersey Department of Environmental Protection (“NJDEP”), are necessary or appropriate for ADC’s investigation of soil/groundwater contaminant migration from alleged sources at the Former Permacel Site (as hereinafter defined) (the “Site Activities”). The Site Activities include, without limitation:

- Periodic sampling, monitoring, inspection, troubleshooting, maintenance, repairs, and adjustment of the Wells. Relocation and reinstallation of Wells as agreed by NJEDA and its successors and/or assigns.
- Restoration of appearance and character of the Site to that which existed prior to ADC’s Site Work, as may be needed during and/or after ADC’s performance of the Site Activities contemplated by this subsection.

Prior to initiating the Site Activities, ADC Personnel shall provide NJEDA, for its review, a work plan that describes in reasonable detail the scope of the Site Activities and a schedule for completing the Site Activities.

ADC Personnel shall comply with all applicable local, state and federal health and safety laws and procedures during the performance of the Site Activities.

All Site Activities shall be done at ADC’s sole cost and expense.

5. Interference with Site Operations

ADC Personnel shall minimize inconvenience, interference with or interruption to NJEDA’s or its tenant’s operations at the Site during the Site Activities. All Site Activities shall be conducted during NJEDA’s normal business hours 8:00am – 5:00pm, except as the Parties may otherwise agree to in advance. ADC Personnel shall provide no less than three (3) days written notice to NJEDA of its intent to conduct Site Activities at the Site. Such notice, which may be supplied by electronic mail, shall provide the nature and extent of the Site Activities to be performed. ADC Personnel shall at all times have proper identification while on the Site.

6. Investigation Derived Waste

ADC shall assume full responsibility for all field equipment and soil cuttings, development water, purge water, and other waste materials generated during the Site Activities (investigation-derived waste or “IDW”). ADC shall, at its cost, properly handle, store and dispose of all IDW. Under no circumstances shall NJEDA be considered the generator of any IDW or listed as such on any applicable waste manifest or disposal documentation. No equipment, materials or waste shall be stored on the Site without NJEDA’s prior consent.

7. Term of Agreement

This Agreement shall commence as of the Effective Date and shall remain in force through the earlier of: 1) the completion of all Site Activities by ADC Personnel or 2) February 1, 2017, unless both Parties otherwise consent in writing. The term of this Right of Entry may be extended, in writing, for two (2) one year periods, by both parties.

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8. Indemnification

Excepting only Losses (as hereinafter defined) caused by the acts or omissions of NJEDA and/or NJEDA's tenant, ADC covenants and agrees to, at all times, indemnify, protect and save harmless NJEDA and NJEDA's tenants from and against all cost or expense resulting from any and all losses, detriments, suits, claims, demands, costs and charges (collectively "Losses"), which NJEDA and/or NJEDA's tenants, may directly or indirectly suffer, sustain or be subject to by reason or on account of entry upon the Site by ADC Personnel, or the conduction of Site Activities by ADC Personnel, including, without limitation, reasonable attorney's fees, costs of defense, judgments and damages ("ADC Caused Losses"). This Paragraph 8 shall survive for three (3) years beyond the expiration or termination of this Agreement (the "Survival Termination Date"); provided, however, that in the event NJEDA or its tenants have notified ADC prior to the Survival Termination Date of any ADC Caused Losses, this Paragraph 8 shall survive until such time as such claims for ADC Caused Losses have been satisfied to the satisfaction of NJEDA and/or its tenants, applicable, or a final non-appealable judgment has been entered into connection with any lawsuits filed in connection with any ADC Caused Losses and the fulfillment of the terms of such judgment by ADC.

9. Assurance

ADC hereby gives written assurance to NJEDA that ADC is undertaking the investigation, and, if necessary, the remediation, of certain environmental contamination at, or migrating from, the Former Permacel Site ("ISRA Work") as required by the Industrial Site Recovery Act (N.J.S.A. 13:1K-5 et seq.) (the "Act") and will continue these activities until such time as ADC secures the "Final Remediation Documentation" (*i.e.*, Response Action Outcome ("RAO") or No Further Action Letters ("NFA")) or other approvals that it is required to obtain pursuant to the Act. Said ISRA Work will be undertaken by ADC in compliance with the Act and its regulations and, exclusive of any costs that might be incurred in connection with any contamination for which NJEDA is/are responsible, said ISRA Work will be performed at no cost or expense to NJEDA.

10. Insurance

ADC, at its own cost and expense, shall obtain and maintain in force and effect, insurance for liability and property damage, in an amount not less than Three Million Dollars (\$3,000,000), naming the NJEDA as well as its tenant, if any, as additional insureds and provide proof of same to the NJEDA prior to commencement of any work on the Site. NJEDA acknowledges that it has received proof of insurance from ADC that is acceptable to NJEDA. 1. Such insurance shall be maintained in full force and effect until one (1) year following completion of the Site Activities and shall not be construed to limit the extent of ADC's liability under this Agreement.

11. Miscellaneous

ADC agrees that, while this Agreement remains in effect, it:

- A. will not create any condition on the Site during or after the completion of its Site Activities, which violates any city, state or other regulatory agency requirement or is dangerous;

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B. will, at the conclusion of the Site Activities, properly fill and seal all monitoring wells and bore holes that were created by ADC Personnel, remove any investigation-related equipment or devices, and return the Site to the condition which existed before commencement of Site Activities unless required to do otherwise by either the LSRP, the NJDEP, the Act, or the regulations promulgated by the NJDEP pursuant to the Act;

C. will, from time to time as such information is filed with NJDEP on or after the Effective Date of this Agreement, deliver to NJEDA a copy of all information, reports, studies, laboratory analysis and results, etc. which ADC, or ADC's LSRP files with the NJDEP in connection with 621 US Route 1 South, North Brunswick ("Former Permacel Site") or the Site Activities that are performed on the Site and/or the Merial Leasehold, by ADC Personnel or ADC's LSRP;

D. hereby grants NJEDA access to review, any and all information, reports, studies, etc. in ADC's or ADC's LSRP's possession that are public records and are associated with the file designated by NJDEP as preferred case number 008529 (a/k/a Former Permacel facility), provide that such reviews, if any, are performed at ADC or ADC's LSRP's offices and, if desired by ADC, are supervised by ADC's counsel;

E. will, from time to time as such information is hereafter obtained, deliver to NJEDA, a copy of all non-privileged and material information, reports, studies, validated laboratory analysis and results, etc, in ADC or ADC's LSRP possession which relate to the Site Activities directly;

F. will not permit the creation of any liens affecting the Site and shall promptly pay and discharge any claims or liabilities which may become a lien against the Site; and

G. will complete all work and closures in accordance with the regulations of the NJDEP.

12. Entire Agreement

This Agreement contains the entire and complete understanding among the Parties concerning its subject matter and all representations, agreements, arrangements, and understandings between the Parties, whether oral or written, have been fully merged herein and are superseded hereby. This Agreement supersedes and replaces any and all previous Right of Entry Permit(s) granted by NJEDA to ADC relative to the Site.

13. Assignment

NJEDA, and its assignees, shall have the right to assign this Agreement without the consent of ADC to any entity that becomes the owner of all or any portion of the Site. In no event shall ADC have the right to assign this Agreement without the consent of NJEDA, which consent may be withheld in NJEDA's sole discretion.

14. Modifications

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The provisions of this Agreement may only be modified by a written instrument signed by the authorized representatives of both Parties.

15. Successors

The rights and obligations of the Parties will be binding upon, inure to the benefit of, and will be enforceable by the Parties and their heirs, legatees, legal representatives, successors, and assigns.

16. Governing Law

This Agreement shall be interpreted and enforced in accordance with the laws of the State of New Jersey. ADC agrees that any claims asserted against NJEDA based in contract law in connection with this Agreement shall be subject to the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq. and that any claims asserted against NJEDA based in tort law in connection with this Agreement shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq.

17. Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. A signature page transmitted by facsimile or by electronic mail in PDF format shall be deemed an original for all purposes.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

Attest:

**NEW JERSEY ECONOMIC
DEVELOPMENT AUTHORITY,**

Name:
Title:

Timothy J. Lizura
President, Chief Operating Officer

Attest:

AVERY DENNISON CORPORATION

Name:
Title:

Name:
Title:

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EXECUTIVE SESSION

MEMORANDUM

TO: Members of the Authority

FROM: Timothy J. Lizura
President and Chief Operating Officer

RE: Camden Waterfront Development
Approval of the Letter Agreement Authorizing the sale of Steiner + Associates Interest in Camden Town Center, L.L.C., the Second Amendment to the Development and Option Agreement (dated October 19, 2004 and amended November 18, 2013), and Third Amendment to the Development Option Agreement (dated October 19, 2004 and amended November 18, 2013).

DATE: June 9, 2015

Summary

I am requesting that the Members approve the following:

- a Letter Agreement between Liberty Property Trust ("LPT") and the Authority which approves LPT's acquisition of 100% of the equity interest in Camden Town Center, L.L.C. ("CTC");
- the Second Amendment to the Development and Option Agreement between CTC and the Authority, dated October 19, 2004 and amended on November 18, 2013 (the "D&O Agreement") which will provide CTC with an additional 120 days to fulfill the \$25 million minimum threshold expenditure currently due July 31, 2015, in the event that the sale of the equity interest to LPT does not occur; and
- the Third Amendment to the D&O Agreement which changes the existing minimum threshold expenditures due to LPT's proposed purchase of 100% of the equity interest in CTC.

Background

October 2004 D&O Agreement

In 2003, Steiner + Associates ("Steiner"), the developer that controls CTC, was selected by Treasury to complete the Aquarium Expansion and to develop further projects on the Camden waterfront. The Authority, because of its economic development experience, was selected by Treasury to facilitate the additional development on the waterfront.

On September 14, 2004, the Members approved the Agreement between the Authority and CTC, which governs the development of 30± acres of land immediately north and adjacent to the Aquarium Expansion developed by New Jersey Aquarium L.L.C., a company also controlled by Steiner + Associates. The original Agreement required that by May 2018, CTC develop \$135 million in real estate projects on the 30 acres.

The 30 acres includes 3 parcel as follows: Parcels 1 (4± acres) and 3 (6± acres) owned by the Authority and Parcel 2 (20± acres) owned by the City of Camden Redevelopment Agency. Under a separate agreement, CRA assigned the development rights to Parcel 2 to the Authority to administer under the Agreement. As of this date, CTC has completed the Aquarium Expansion (\$7± million development cost) and the Ferry Terminal Building (\$20± million development cost).

November 2013 Amendment to the D&O Agreement

In July, 2013, the Members approved amendments to the D&O Agreement which included the following changes to Section 13:

Item	Requirement	Revised Estimated Due Date	Notes
\$25 Million Milestone	Spend or incur an additional \$25 million (revised subtotal of milestone spending: \$45 million)	7/31/2015	This amendment reduced the spending milestone from \$40 million to \$25 million. This period was extended from May 2013 to July 2015.
\$75 Million Milestone	Spend or incur an additional \$75 million (revised total of milestone spending: \$120 million)	7/31/2020	This amendment extended the period from May 2018 to July 2020.
Option to Purchase	Expiration Date	7/31/2019	This amendment extended the period from May 2017 to July 2019.

In addition, the Members approved the following revisions to the D&O Agreement:

1. *Interim Milestones and Governmental Infrastructure.* Section 12 was also adjusted to be consistent with the revised \$25 and \$75 milestone dates. Completion of “Required Governmental Infrastructure” was removed as a precondition to meeting the milestone deadlines.
2. *Tram Landing Site.* The amendment also acknowledged that the proposed Tram Landing Site (for the tram between Philadelphia and Camden to be developed by the Delaware River Port Authority) is no longer included in the parcels governed by the Agreement.

3. *Parcel 3.* The remaining portion of Parcel 3 that remained undeveloped was removed from the D&O Agreement. The Authority regained the development rights to the parcel. To the extent possible, any future development would be consistent with the current master plan and design guidelines developed by CTC for the three Parcels. However, the Authority will not be bound by the current master plan or design guidelines when soliciting proposals. In approving proposals, the Authority will advise CTC of deviations from the existing master plan and design guidelines.

Current Project Status

Since 2013, CTC has proceeded with submitting items as required to meet the Section 12 interim milestones by completing the environmental due diligence, submitting an infrastructure plan and plans and specifications for a residential project on a portion Parcel 2 which adjoins Campbell's Field. Under the D&O Agreement there is a \$25 million milestone due on July 31, 2015. CTC is entitled to a \$7 million credit for amounts that exceeded the \$13 million milestone, which CTC met when it completed the Ferry Terminal building.

In January 2015, CTC approached Staff with the possibility that Liberty Property Trust has an interest in developing commercial properties on a portion of Parcel 2. At that time, CTC also noted its continued interest in developing the current residential project on a portion of Parcel 2 that adjoins Campbell's Field. On May 5, 2015, LPT met with Staff and presented its preliminary vision to develop approximately 418,250 SF of commercial space (retail, office, and flex space), 1,638 residential units, and 140 hotel rooms on Parcel 2 and property currently controlled by DRPA to develop the Tram.

To permit negotiations between CTC and LPT, the President and Chief Operating Officer, on March 18, 2015 and May 20, 2015, authorized the standstill of the existing interim milestones. The current standstill period expires on June 20th. The July 31, 2015 milestone requirement is still pending.

Background on Liberty Property Trust

Established in 1972 and headquartered in Malvern Pennsylvania, LPT develops, acquires, leases and manages commercial (industrial and office) real estate. In 1994, LPT became a publicly traded real estate investment trust. LPT owns and manages 88 million SF of commercial real estate in 24 United State markets and the United Kingdom.

The firm's primary growth is through development of new commercial space. As of December 31, 2014, LPT had 4.3 million SF of commercial space in development (wholly owned by LPT), totaling \$465.1 million. The properties in development, as of December 31, 2014, are 48% leased. In addition to properties under development, LPT owns approximately 1,491 acres, zoned for commercial uses, which the estimated development capacity of 19.8 million SF. This land is valued at approximately \$269 million.

As of December 31, 2014, LPT's holdings included 63% industrial properties and 37% percent office properties. LPT is in the process of transitioning its portfolio holdings from suburban office to industrial and metro-office properties.

The inherent risks in the transition include:

- Industrial properties have less cash flow than suburban office properties
- The anticipated demand in industrial and metro-office sectors may not materialize
- LPT's identification of markets with strong demographics and economic fundamentals may prove erroneous due to economic and global conditions outside LPT's control

The following chart summarizes LPT's financial condition as of December 31, 2014 and March 31, 2015:

	<i>As of:</i> 12/31/2014	<i>As of:</i> 3/31/2015	% Change
Total Assets	\$6,625,536,000	\$6,564,504,000	-0.92%
Total Liabilities			
Debt & Other Liabilities	\$3,163,395,000	\$3,502,755,000	10.73%
Equity	\$3,462,141,000	\$3,061,749,000	-11.56%
Operating Revenue	\$792,631,000	\$206,901,000	
Net Income	\$224,163,000	\$30,951,000	
Income Per Share			
Net Income Per Share	\$1.47	\$0.70	
Financial Structure			
Shares	64.00%	46.64%	-17.36%
Debt (Secured & Unsecured)	36.00%	53.36%	17.36%
Total	100.00%	100.00%	

The Letter Agreement

The proposed Letter Agreement between the LPT and the Authority will provide the following:

1. The Authority approves LPT's acquisition of 100% of the equity interest in CTC.
2. At the acquisition closing, the Authority and CTC will execute the Third Amendment to the D&O Agreement.
3. The Authority will cooperate with LPT to:
 - a. Reach agreements with the Delaware River Port Authority and the City of Camden Redevelopment Authority to obtain approval of the D&O Amendment, to terminate the easements in favor of DRPA for the construction of the Tram, Tram Landing Site, and Tram Parking Facility that run across the development site

- b. Reach agreement with CCRA regarding the agreement required by Section 3 of the D&O Amendment
 - c. Work with Cooper's Square Urban Renewal Venture, LLC to identify acceptable parking alternatives for the Ferry Terminal building
 - d. Establish use restrictions, architectural controls and architectural review process for the development parcel.
4. LPT will work to complete the amendment to the Master Plan which will include a time table for development.
5. With regard to items 1-4 above, LPT's sole remedy shall be a termination of its Entity Interest Acquisition Agreement and the parties agree that there will be no liability for damages under this letter. LPT shall have no remedy against the NJEDA at law or equity.
6. The Authority agrees that for a period of up to one year, the Authority will not revoke its approval of LPT acquiring the equity interest in CTC and the Authority will not change its agreement to enter into the Third Amendment to the D&O Agreement. With regard to these provisions, the parties have agreed to be governed by the provisions of the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. for Sections 7 through 10 of the Letter Agreement.

The proposed Letter Agreement will permit LPT to execute the agreement to purchase 100% of the equity in CTC and to commence due diligence, and to negotiate with DRPA, CCRA and Cooper's Square as noted above. Upon completion of the due diligence period, LPT will either purchase the equity in CTC or provide notice that it is not proceeding with the purchase. The Letter Agreement, in substantially final form, is attached to this memorandum as Exhibit A.

The Second Amendment to the D&O Agreement

The proposed Second Amendment to the D&O Agreement will extend the existing \$25 million milestone from July 31, 2015, until the earlier of four (4) months after the end of Liberty's due diligence period or until four (4) months after Liberty gives written notification that it no longer intends to acquire the existing membership interest in CTC. This amendment will permit LPT to complete the due diligence process under the agreement to acquire the equity interest in CTC. The Second Amendment to the D&O Agreement, in substantially final form, is attached to this memorandum as Exhibit B.

The Third Amendment to the D&O Agreement

The proposed Third Amendment to the D&O Agreement will include the following revisions to Section 12 of the D&O Agreement:

Item	Requirement	Revised Estimated Due Date	Notes
\$36 million	pay or incur \$36 million between July 1, 2015 and 12 calendar months after the date of the Third Amendment (revised subtotal of milestone spending: \$56 million)	12 calendar months after the date of the Third Amendment	The amendment increases the milestone from \$25 to \$35 million. The period will be extended from July 31, 2015 to 12 calendar months after the

Item	Requirement	Revised Estimated Due Date	Notes
\$36 million	spend \$36 million (as opposed to incur) within 24 calendar months after the date of the Third Amendment (revised subtotal of milestone spending: \$56 million)	24 calendar months after the date of the Third Amendment	This section is new and requires \$36 million be spent within 24 calendar months after the date of the Third Amendment.
\$40 million	pay or incur \$40 million within 24 months after the date of the Third Amendment (subtotal of milestone spending: \$76 million)	24 calendar months after the date of the Third Amendment	This section is new and requires \$40 million be paid or incurred within 24 calendar months after the date of the Third Amendment.
\$40 million	spend (as opposed to incur) \$40 million within 36 months after the date of the Third Amendment (subtotal of milestone spending: \$76 million)	36 calendar months after the date of the Third Amendment	This section is new and requires \$40 million be spent within 36 calendar months after the date of the Third Amendment.
\$74 million	spend or incur \$74 million within 42 calendar months after the date of the Third Amendment (revised subtotal of milestone: \$150 million)	42 calendar months after the date of the Third Amendment	This amendment decreases the milestone from \$75 to \$74 million. The period will be extended to 42 calendar months after the date of the Third Amendment.
\$74 million	spend (as opposed to incur) \$74 million within 54 calendar months after the date of the Third Amendment (revised subtotal of milestone: \$150 million)	54 calendar months after the date of the Third Amendment	This section is new and requires \$74 million be spent within 54 calendar months after the date of the Third Amendment.

The following revisions are also proposed:

1. *State Projects*. Subject to State House Commission approval, the right for the State to develop projects on the D&O parcels is deleted.
2. *Permitted Assignee*. The definition of “Permitted Assignee” that may develop projects is revised to remove references to Mall Camden Investments, LLC, and permit LPT or its affiliate to develop a project. It also permits an unaffiliated hotel or residential developer, approved by the Authority in its sole discretion, to develop projects.
3. *Due Diligence*. This revision will permit LPT to perform due diligence at any time under an access agreement to be executed by the parties.
4. *Tram Site*. Subject to a written agreement with DRPA, DRPA development projects will no longer include the Tram Landing Site or Tram Parking Facility.
5. *Interim Milestones*. The interim milestones are removed and replaced with a semi-annual reporting requirement.
6. *Future Easements for DRPA Projects*. The Authority may no longer grant the DRPA or any other person any additional easements in connection with the DRPA Development Projects.
7. *Default Sections*. The pertinent default sections are revised to include LPT.

8. *Ferry Terminal Parking*. The Authority agrees to cooperate with CTC to find alternative parking for the Ferry Terminal Building tenants.
9. *Landlord Improvements Under Signed Leases*. Any fully signed lease that includes landlord paid improvements will count as an amount incurred as minimum threshold expenditure.
10. *Options on Parcel 2*. Subject to CCRA approval, If CTC cancels an option on Parcel 2, it may again exercise that option at a later time.

These revisions are consistent with DRPA's future plans for development on the Tram parcel, and reflect LPT's needs to make Parcels 1 and 2 as financially productive as possible. In return for the proposed changes, the Authority obtained a commitment for an additional \$30 million of investment on the Camden waterfront. The Third Amendment to the D&O Agreement, in substantially final form, is attached to this memorandum as Exhibit C.

Recommendation

I ask that the Members approve: (1) the Letter Agreement; (2) the Second Amendment to the D&O Agreement and (3) the Third Amendment to the D&O Agreement. The final documents may be subject to revisions, although the basic terms and conditions will remain consistent with those in Exhibit A through C. The final terms of the Agreement will be subject to the approval of the President and Chief Operating Officer, and the Attorney General's Office.



Timothy J. Lizura
President and Chief Operating Officer

Prepared by: Juan Burgos



EXECUTIVE SESSION

MEMORANDUM

TO: Members of the Authority

FROM: Timothy J. Lizura
President/Chief Operating Officer

DATE: June 9, 2015

RE: Litigation Settlement Authorization
New Greystone Park Psychiatric Hospital Project

Summary

The Members are requested to authorize NJEDA staff and the Attorney General's Office to settle the Torcon, Inc. v. New Jersey Economic Development Authority, et al. (UNN-L-0272-10) and Vitetta v. New Jersey Economic Development Authority (UNN-L-923-13) litigations related to the Greystone Park Psychiatric Hospital Project.

Background

NJEDA is named as a third-party defendant in a lawsuit filed by S.M. Electric Company, Inc. v. Torcon, Inc., et al. related to the construction of the Greystone Park Psychiatric Hospital Project. S.M. Electric filed a Complaint, in NJ Superior Court, against Torcon in January 2010. S.M. Electric amended its complaint to sue NJEDA to impose a constructive trust on the retainage it was holding on behalf of Torcon.

In September of 2010, Torcon filed a Third-Party Amended Complaint including NJEDA as a third-party defendant. The Amended Complaint seeks NJEDA's indemnification for damages asserted by S.M. Electric against Torcon, and contribution from NJEDA in the event Torcon is held liable to S.M. Electric.

In March of 2013, Vitetta filed a separate Complaint against NJEDA for payment of a belated invoice in the amount of \$792,084.19 for additional/extended services. The causes of action are breach of contract and violation of the Prompt Payment Act.

NJEDA in turn has asserted counterclaims against Torcon and crossclaims against Vitetta and its electrical subconsultant, Cosentini, for additional costs sustained on the project.

In February of 2013, the Members authorized the establishment of a \$0 settlement floor (whereby NJEDA would neither receive money nor pay in excess of funds currently held on retainage on Torcon's contract). Mediation occurred for one day. The mediation was interrupted by litigating whether the construction manager, Torcon, Inc., had insurance to cover the claim against it (and the other defendants) by the Plaintiff, S.M. Electric Company, Inc. The courts decided there was no insurance coverage. The lawsuit progressed through the discovery phase and preliminary expert reports were prepared and submitted by all parties. The trial was scheduled to occur in the fall of 2015.

Mediation was renewed in December 2014 for two days and continued on February 26, 2015 with a final mediation session held on March 26th. During the March 26th mediation session, a settlement was reached by all parties, subject to the approval of the NJEDA Board and the Attorney General's Office, as follows:

Payments to Plaintiff:

➤ Torcon payment to Plaintiff	\$2,500,000.00
➤ Vitetta payment (through its insurance carrier) to Plaintiff	\$ 525,000.00
➤ Cosentini payment (through its insurance carrier) to Plaintiff	\$ 525,000.00
➤ Nexus payment to Plaintiff in a sum to be determined*	\$ TBD
	<u>\$3,550,000.00</u>

Payments to Other Parties:

➤ Nexus payment to Torcon*	\$ 5,000.00
➤ Nexus payment to NJEDA*	\$ 5,000.00
➤ Vitetta payment (through its insurance carrier) to NJEDA	\$ 275,000.00
➤ NJEDA payment to Vitetta (due after receipt of Vitetta payment)	\$ 275,000.00
➤ NJEDA payment to Torcon (release of retainage)	\$1,437,339.00
➤ NJEDA payment to Torcon (interest on retainage)**	\$ 283,920.50

*An additional amount to be paid to the Plaintiff by Nexus (Plaintiff's subconsultant) was discussed but not resolved during mediation. The settlement is not contingent upon this additional payment. These payments are estimated to total \$10,000.

**The interest payment is approximately three percent (3%) of the retainage held by the Trustee which was not disputed but not paid due to the litigation.

In consultation with the Attorney General's Office, staff recommends that NJEDA accept the settlement outlined above based on the uncertainty of the outcome of litigation should the case go to trial. These variables include the expert witness fees estimated by the experts to be \$219,000, future legal fees estimated to be \$216,000, for total estimated additional costs of \$435,000. This is a conservative estimate. The time for NJEDA staff to proceed will be considerable. The trial could last 4 to 6 weeks with excessive preparation time for three senior staff members. NJEDA is a "target defendant" as all parties know it is holding considerable funds in excess bond proceeds. Additionally, NJEDA has affirmative claims but they are subject to the vagaries of litigation particularly in terms of the amount of damages. NJEDA's experts have concluded that discounting

damages in this case is appropriate considering all crossclaims, counterclaims and third-party pleadings. Any potential damages awarded to NJEDA would be offset by the cost of expert and attorney fees, further reduced by staff costs and finally subject to the Vitetta claim against NJEDA which, if successful, could completely eliminate any recovery. Finally, DHS has indicated it approves of the settlement and it would receive the remaining excess bond funds upon settlement in the approximate amount of \$4,250,000.

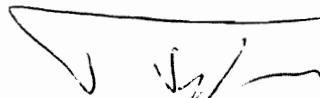
The settlement has been approved by and is binding upon all other parties and the NJEDA after its Board and the Attorney General's Office approve it. On May 28, 2015, the Attorney General's Office approved the settlement.

All remaining funds after the settlement payment and final close out of the litigation will be released from the constructive trust and will be made available to the New Jersey Department of Human Services as outlined in the respective bond documents. Final costs related to the litigation are estimated to be \$125,000. A final requisition will be made to the Trustee to fund the settlement payments, consultant costs, legal fees due to the Attorney General's Office and NJEDA staff time.

If the settlement is accepted, all claims, crossclaims and counterclaims against NJEDA related to the litigation are resolved and the project will proceed to final close-out. A Stipulation of Dismissal with prejudice and without costs or attorneys fees to any parties will be signed by all parties and filed with the Court with the exception of Torcon's claims against XL Insurance and Greenwich Insurance.

Recommendation

In summary, the Members are requested to authorize: (i) the settlement of the Greystone litigation as outlined above; (ii) the payment of all final litigations costs; and (iii) the execution of any and all documents required to effectuate this settlement, on final terms acceptable to the Attorney General's Office, the Chief Executive Officer, and the President/Chief Operating Officer.



Timothy J. Lizura
President/Chief Operating Officer

Prepared by: Donna T. Sullivan