NJEDA

MEMORANDUM

TO: Members of the Authority

FROM: Timothy Sullivan
Chief Executive Officer

DATE: September 12, 2019

SUBJECT: Agenda for Board Meeting of the Authority September 12, 2019

Notice of Public Meeting

Roll Call

Approval of Previous Month's Minutes

CEO's Report to the Board

Authority Matters

Office of Economic Transformation

Incentive Programs

Bond Projects

Loans/Grants/Guarantees

Real Estate

Board Memorandums

Executive Session

Public Comment

Adjournment

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

August 13, 2019

MINUTES OF THE MEETING

Members of the Authority present: Chairman Kevin Quinn, Catherine Brennan for State Treasurer Elizabeth Muoio; Commissioner Marlene Caride of the Department of Banking and Insurance; Public Members: Charles Sarlo, Vice Chairman; and Fred Dumont.

Members present via conference call: Commissioner Robert Asaro - Angelo of Department of Labor and Workforce Development; and Public Members Philip Alagia, and John Lutz, Third Alternate Public Member.

Absent: Commissioner Catherine McCabe of the Department of Environmental Protection, and Public Members William Layton, Thomas Scrivo, Massiel Medina Ferrara, and Louis Goetting.

Also present: Timothy Sullivan, Chief Executive Officer of the Authority; Deputy Attorney General Gabriel Chacon; Jane Rosenblatt, Deputy Chief of Staff, Office of Commissioner Catherine McCabe; Adam Sternbach, Governor's Authorities' Unit; and staff.

Mr. Quinn called the meeting to order at 10:00 am.

Pursuant to the Internal Revenue Code of 1986, Mr. Sullivan 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, Mr. Sullivan 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

MINUTES OF AUTHORITY MEETING

The next item of business was the approval of the July 16, 2019 meeting minutes. A motion was made to approve the minutes by Mr. Dumont, and seconded by Mr. Sarlo, and was approved by the 8 voting members present.

There was a request to correct information for Ms. Sue Altman, State Director, New Jersey Working Families. Her organization was listed as New Jersey Work First, in the July 13, 2019 minutes.

CEO Timothy Sullivan announced that Adam Sternbach, Assistant Counsel, Governor's Authorities Unit, would be leaving that office soon, and that his guidance was appreciated.

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

BOARD PRESENTATION

Overview of Portfolio Management and Compliance Division.

AUTHORITY MATTERS

ITEM: 2018 Comprehensive Annual Report
REQUEST: To approve the Authority's comprehensive annual report for 2018, as required under Executive Order No. 37.
MOTION TO APPROVE: Mr. Lutz **SECOND:** Mr. Sarlo **AYES: 8**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 1

ITEM: 21st Century Redevelopment Program — Program Improvements
REQUEST: To approve improvements to the 21st Century Redevelopment Program to make the program more accessible to municipalities, counties and redevelopment agencies.
MOTION TO APPROVE: Mr. Dumont **SECOND:** Ms. Brennan **AYES: 8**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 2

ITEM: Special Counsel: Executive Order 52 (Murphy 2019) and Attorney General Investigation – Amendment to Retention Agreement
REQUEST: To approve additional contract funding of $850,000 (for a revised fee cap of $1,900,000) due to ongoing need for representation related to the subject legal matters.
MOTION TO APPROVE: Ms. Brennan **SECOND:** Mr. Sarlo **AYES: 8**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 3

ITEM: Information Technology and Business Process Analysis Consulting Services and Microsoft Dynamics CRM 2013, Commercial Loan System and Additional Third-Party Systems – Procurement and Implementation – Ref. 2014-RFQ/P-057.
REQUEST: To approve $1,050,000 in new contract funding to support additional functionality and system enhancements not contemplated in the original project scope of work.
MOTION TO APPROVE: Mr. Dumont **SECOND:** Mr. Lutz **AYES: 8**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 4

OFFICE OF ECONOMIC TRANSFORMATION

ITEM: Expansion of the Memorandum of Understanding between the Authority and the Commission on Science, Innovation and Technology.
REQUEST: To approve amending the Memorandum of Understanding with the Commission for the purpose of providing support services to the Commission.
MOTION TO APPROVE: Ms. Brennan **SECOND:** Commissioner Caride **AYES: 8**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 5

ITEM: NJ CoVest Fund— Early Stage Technology Company Investment Program
REQUEST: To approve the changes to the NJ employment requirement to the NJ CoVest program through the remainder of the program as determined by available funding.
MOTION TO APPROVE: Mr. Lutz **SECOND:** Mr. Dumont **AYES: 8**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 6

INCENTIVE PROGRAMS

Grow New Jersey Assistance Program – Modifications

ITEM: Madame RX LLC APPL.#45312
REQUEST: To approve the change of location of the qualified business facility from 418 Federal Street, Camden City to 6955 Central Highway, Pennsauken
MOTION TO APPROVE: Ms. Brennan **SECOND:** Commissioner Caride **AYES: 8**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 7

NJ Film and Digital Media Tax Credit Program

ITEM: To approve the following NJ Film and Digital Media Tax Credit Projects for allocations in Fiscal Year 2020

PROJECT: WB Studios Enterprises Inc. APPL.#45522
MAX AMOUNT OF TAX CREDITS: $1,962,642
MOTION TO APPROVE: Commissioner Caride **SECOND:** Ms. Brennan **AYES: 8**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 8

PROJECT: Twentieth Century Fox Film Corporation APPL.#45587
MAX AMOUNT OF TAX CREDITS: $6,855,273
MOTION TO APPROVE: Commissioner Caride **SECOND:** Ms. Brennan **AYES: 8**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 9

BOND PROJECTS

Public Hearing Only

PROJECT: Blackhorse EHT Urban Renewal LLC APPL.# 45415
LOCATION: Egg Harbor City, Atlantic County
PROCEEDS FOR: Construction, renovation, working capital
PUBLIC HEARING: Yes
PUBLIC COMMENT: None

PROJECT: Friends of Vineland Public Charter School APPL.# 45866
LOCATION: Vineland City, Cumberland County
PROCEEDS FOR: Refinancing
PUBLIC HEARING: Yes
PUBLIC COMMENT: None

Bond Modifications

ITEM: Temple Emanuel of the Pascack Valley, Inc. $2,000,000 Tax-Exempt Stand-Alone Bond Modification (P13558 & P13559)
REQUEST: To approve a maturity extension from December 1, 2021 to December 1, 2041.
MOTION TO APPROVE: Mr. Dumont **SECOND:** Ms. Brennan **AYES: 8**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 10
PUBLIC HEARING: Yes
PUBLIC COMMENT: None

LOANS/GRANTS/GUARANTEES

Direct Loan Program

PROJECT: Fort Monmouth Economic Revitalization Authority APPL.#45703
LOCATION: Oceanport Borough, Monmouth County
PROCEEDS FOR: Working Capital
FINANCING: $5,000,000 NJEDA Direct Loan
MOTION TO APPROVE: Mr. Dumont **SECOND:** Mr. Sarlo **AYES: 8**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 11

Premier Lender Program

PROJECT: Gary Neil Enterprises LLC APPL.#45849
LOCATION: Blackwood, Camden County
PROCEEDS FOR: Purchase of Property
FINANCING: $3,200,000 M & T Bank loan with 50% ($1,600,000) NJEDA participation.
MOTION TO APPROVE: Mr. Dumont **SECOND:** Mr. Sarlo **AYES: 8**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 12

Hazardous Discharge Site Remediation Fund

ITEM: Summary of NJDEP Hazardous Discharge Site Remediation Fund Program projects approved by the Department of Environmental Protection.
MOTION TO APPROVE: Ms. Brennan **SECOND:** Commissioner Caride **AYES: 8**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 13

PROJECT: City of Paterson (Leader Dyeing and Finishing Co.) APPL.#45707
LOCATION: Paterson City, Passaic County
PROCEEDS FOR: Remedial Investigation
FINANCING: $72,354

PROJECT: Absolute Auto & Truck Salvage Company, Inc. APPL.#45569
LOCATION: Middlesex Borough, Middlesex County
PROCEEDS FOR: Remedial Action
FINANCING: $496,092 loan

Petroleum Underground Storage Tank (PUST)

ITEM: Summary of NJDEP Petroleum UST Remediation, Upgrade & Closure Fund Program projects approved by the Department of Environmental Protection.
MOTION TO APPROVE: Mr. Dumont **SECOND:** Mr. Lutz **AYES: 8**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 14

PROJECT: The Belli Moran Group, LLC APPL.#45781
LOCATION: Dover Township, Ocean County
PROCEEDS FOR: Upgrade, Closure, Remedial Action
FINANCING: $272,485 loan

OFFICE OF RECOVERY

ITEM: Energy Resilience Bank — RWJBarnabas Newark Beth Israel Medical Center CHP Project Funding Modification Recommendation
REQUEST: Approval to modify the March 24, 2017 Board action for the RWJBarnabas Newark Beth Israel Medical Center CHP Project under the Energy Resilience Bank program by changing the reservation of ERB funding from $15,176,079 to $16,832,794
MOTION TO APPROVE: Mr. Dumont **SECOND:** Commissioner Caride **AYES: 8**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 15

BOARD MEMORANDUMS

FOR INFORMATION ONLY: Credit Underwriting projects Approved Under Delegated Authority

Premier Lender Program:

PROJECT: 100 Prospect St. LLC (P45778)
LOCATION: Metuchen Borough, Middlesex County
PROCEEDS FOR: Property Acquisition
FINANCING: Valley National Bank $1,000,000 loan with a (50%) $500,000 Authority participation

PROJECT: PAL Real Estate Holdings III, LLC (P45847)
LOCATION: Newark City, Essex County

PROCEEDS FOR: Property Acquisition
FINANCING: ConnectOne Bank $1,845,000 loan with a (22.22%) $410,000 Authority participation.

FOR INFORMATION ONLY: Incentives Modifications — 2nd Quarter 2019

FOR INFORMATION ONLY: PUST and HDSRF Program Funding Status

FOR INFORMATION ONLY: Post Closing Credit Delegated Authority Approvals for 2nd Quarter 2019

FOR INFORMATION ONLY: Technology & Life Sciences Delegated Authority Approvals for Q2 2019

FOR INFORMATION ONLY: India Trade Mission Research

PUBLIC COMMENT

Mr. Mark Parker-Magyar, New Jersey Working Families, addressed the board, stating that there was a series of conflicting numbers for jobs created. He stated that he appreciated the Authority sending surveys to companies, seeking certification of the number of jobs created, and; he urged those companies to comply with the request.

EXECUTIVE SESSION

The next item was to adjourn the public session of the meeting and enter into Executive Session to discuss matters involving lease and contract negotiations where disclosure could adversely affect the public interest and to receive attorney-client advice regarding ongoing legal inquiries.
The minutes will be made public when the need for confidentiality no longer exists.
MOTION TO APPROVE: Mr. Quinn **SECOND:** Mr. Dumont **AYES: 8**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 16

The Board returned to Public Session.

AUTHORITY MATTERS

The next item was to approve a MOU as discussed in executive session.
MOTION TO APPROVE: Mr. Quinn **SECOND:** Mr. Dumont **AYES: 8**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 17

The next item was to approve a revision to the First Lease Amendment Agreement as discussed in executive session.
MOTION TO APPROVE: Mr. Quinn **SECOND:** Mr. Dumont **AYES: 8**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 18

The next item was to approve a second amendment to an Information Technology and Business Process Analysis Consulting Services contract as discussed in executive session.
MOTION TO APPROVE: Mr. Quinn **SECOND:** Mr. Dumont **AYES: 8**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 19

There being no further business, on a motion by Mr. Quinn, and seconded by Commissioner Caride, the meeting was adjourned at 12:30pm.

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.

Patience Purdy, Program Manager
Marketing & Stakeholder Outreach
Assistant Secretary

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan

DATE: September 12, 2019

RE: Monthly Report to the Board

I have a lot of exciting news to share today about the NJEDA's progress toward a stronger and fairer New Jersey economy, but first, I am pleased to announce that Christine Baker has joined the NJEDA as Senior Vice President, Business Operations and Strategic Initiatives. In this newly-created position, Christine will oversee a number of critical areas of focus, including Product Development, Marketing, Governance, and Transparency. She will also be responsible for process improvement and ensuring that the NJEDA meets and exceeds our obligations for transparency and accountability, with a particular focus on the initiatives we have committed to in response to the reports from the Office of the State Comptroller and the Task force on EDA Tax Incentives. Christine will report directly to me, and will join the NJEDA's Senior Leadership Team.

INVESTING IN PEOPLE

Last week, Governor Phil Murphy welcomed four apprentices to the Princeton Plasma Physics Lab (PPPL) for an event celebrating a milestone for New Jersey apprenticeships. According to the Department of Labor and Workforce Development (NJDOL), the total number of New Jersey apprenticeships surpassed 8,000, a new high for the Murphy administration.

During that event, I had the pleasure of witnessing a signing ceremony that launched the new PPPL apprentices into a four-year on-the-job training program. The apprentices in the program will train as mechanical and electrical technicians and attend classes at Mercer County Vocational Technical Schools. While their specific jobs will be determined at the end of the program, they will be part of a team seeking to develop fusion energy as a clean, limitless, and safe method of generating electricity. At PPPL, they will receive competitive pay and benefits, 8,000 hours of on-the-job training, and related classroom instruction. They will be eligible for full-time employment after completing the program.

The ceremony was also attended by Labor Commissioner Robert Asaro-Angelo; U.S. Department of Energy Under Secretary for Science Paul Dabbar; PPPL Director Steven Cowley; Assemblyman Andrew Zwicker (D-16), who heads PPPL's Office of Communications and Public Outreach; and others from PPPL and Princeton University.

INVESTING IN COMMUNITIES

Project teams from nine New Jersey municipalities and counties convened in Trenton last month to present the plans they developed for building or augmenting their local innovation ecosystems as part of the NJEDA's Innovation Challenge. This new initiative provided funding for municipalities and counties to partner with higher-education institutions and other strategic partners to consider groundbreaking approaches to building public-private and community partnerships, nurturing entrepreneurship, and upgrading infrastructure. The first round of the program included nine municipalities: Atlantic City, Atlantic County, Bridgeton, Camden

County, Monmouth County, New Brunswick, Passaic County, Trenton, and Union Township.

Project teams presented their progress to an audience of state economic development leaders, including representatives of the Murphy Administration, and community leaders from relevant areas. The plans will be made available to the public in the coming weeks so that other localities may learn from the experience of the Innovation Challenge project teams. A second round of Innovation Challenge projects was approved in March 2019. This second round includes Cape May County, Hoboken, Newark, Paterson, and Plainfield. For the full project details visit http://www.njeda.com/innovation-challenge.

MAKING NEW JERSEY THE STATE OF INNOVATION

NJEDA Initiatives in support of Governor Murphy's vision for restoring New Jersey's leadership in innovation have recently hit milestones.

The NJEDA's Office of Economic Transformation (OET) has been working closely with the Board of Public Utilities (BPU) and other agencies on the Offshore Wind Task Force to expand New Jersey's offshore wind industry. A consistent challenge throughout this process has been the lack of a comprehensive list of New Jersey-based companies that established offshore wind companies can partner with or purchase from as they advance projects in the state. The NJEDA addressed this issue by working with the Business Network for Offshore Wind to launch the Offshore Wind Supply Chain Registry– a free, searchable registry that facilitates business connections between large Offshore Wind projects and local businesses. As of last week, more than 400 businesses have joined the registry since it launched less than six months ago.

In another move designed to attract investment, the NJEDA issued a Request for Expressions of Interest (RFEI) for New Jersey-based companies interested in the New Jersey-Israel Innovation Partnership Initiative. New Jersey companies that participate in the initiative will gain both access to international partners and to research and development (R&D) funds from an Israeli company and the Israel Innovation Authority (IIA).

We also recently announced that New Jersey Institute of Technology (NJIT) spinout OculoMotor Technologies became the third company to benefit from rent support through NJEDA's NJ Ignite Program when it moved to NJIT's VentureLink business incubator. NJ Ignite provides up to nine months of rent support for startup technology and life sciences businesses moving to an approved collaborative workspace. OculoMotor is garnering worldwide attention for the creation of virtual reality games that help optometrists offer vision therapy to their patients.

MAKING GOVERNMENT EASIER TO DO BUSINESS WITH

In support of Governor Phil Murphy's plan for better supporting small business, the NJEDA has started accepting applications for the Community Development Financial Institution (CDFI) Initiative, which was first announced at the July 2019 NJEDA Board meeting. Developed in response to feedback from stakeholders in New Jersey's small business community, the CDFI Initiative makes $15 million available to CDFIs to expand their capacity to provide financing to New Jersey small businesses in two ways. The first is through the Loans to Lenders component of the CDFI Initiative, in which the NJEDA will provide direct loans to experienced CDFIs with demonstrated lending and portfolio management history. The second component is the Premier CDFI Program, in which NJEDA will provide participations and guarantees of up to $500,000 on CDFI term loans or working capital lines of credit for qualified New Jersey small businesses. NJEDA's participation provides more flexibility to CDFIs and the borrowing business by reducing the CDFI's overall exposure in the transaction.

The benefits of the NJEDA's Premier Lender Program were on display when representatives from the NJEDA and M&T Bank visited Kalustyan Corporation in Kenilworth. In March, the family-owned global spice supplier closed on a $9.85 million loan from M&T Bank with a $1 million participation from the NJEDA that enabled the company to consolidate multiple rented sites in one permanent location in Kenilworth. The 144,000-square-foot facility is a complement to the 100,000-square-foot facility that Kalustyan Corporation owns in Union.

Two other small businesses have announced that they are expanding in North Jersey with financing support from the NJEDA. JRL Imports was approved for a $524,000 direct loan from the NJEDA in July, which, combined with a $655,000 loan from Cross River Bank, will enable the company to acquire a facility in Paterson. The company plans to maintain 21 jobs and create an additional seven after completing the move.

MTB AMG closed on loan in July 2019 for $1.4 million from ConnectOne Bank, an NJEDA Premier Lender, with a $410,000 participation from the NJEDA. The company is using the funding to relocate the company's headquarters and 160 jobs from Brooklyn to Newark.

EVENTS/SPEAKING ENGAGEMENTS/PROACTIVE OUTREACH

NJEDA representatives participated as speakers, attendees, or exhibitors at 23 events in August. These included the Time for Turbines event in Atlantic City, the Mount Holly Small Business Resources Forum, a Diversity Expo hosted by the Statewide Hispanic Chamber of Commerce of New Jersey, the Camden Future Bankers Camp, and an NJBIZ Healthcare Technology Panel.

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AUTHORITY MATTERS

MEMORANDUM

TO: Members of the Authority

FROM: Kevin A. Quinn
Chairman

DATE: September 12, 2019

RE: Annual Organizational Meeting

Summary

The New Jersey Economic Development Authority's By-Laws provide that an annual reorganization meeting be held in September of each year.

The Members are asked to consider the following recommendations associated with the annual reorganization meeting:

Officers

Traditionally, the position of the Board Treasurer has been held by the New Jersey State Treasurer, who serves on the EDA Board in ex officio capacity. To remain consistent with that practice, it is recommended that the Members approve the position of Board Treasurer to be held by State Treasurer Elizabeth Maher Muoio.

Charles Sarlo has served as Vice Chairman since September 13, 2018, and it is recommended that the Members approve Charles Sarlo to continue to serve the position of Vice Chairman.

As per the By-Laws, Tim Sullivan, in his role of CEO, will serve as Board Secretary. The appointment of Assistant Secretaries to the Board to support in the Secretary's absence is also required. It is recommended that the Members approve Lori Matheus, Bruce Ciallella, Fred Cole, Rich LoCascio, and Patience Purdy serve as Assistant Secretaries.

Committees

The Authority has five committees that meet throughout the year. I am requesting that the Members approve the following Members or their Ex Officio designees to participate in the following committees, with the appointment of individual Members to Chair each committee as indicated:

Director's Loan Review Committee - *Chair: Robert Asaro-Angelo (or designee), Commissioner of the Department of Labor and Workforce Development*

Participants: Fred Dumont
Lou Goetting
Marlene Caride (or designee), Commissioner of the Department of Banking and Insurance

The DLRC will meet monthly to review all non real estate development Authority exposure requests, including, but not limited to, direct and loan guarantee requests.

Audit Committee – *Chair: Kevin A. Quinn*
Participants: Charles Sarlo
State Treasurer Elizabeth Maher Muoio (or designee)

The Audit Committee monitors the financial operations of the Authority including the review of the annual operating budget and those responsibilities outlined in the committee Charter. The committee will meet quarterly and at such other times as determined by the Chair.

Real Estate Committee - *Chair: Charles Sarlo*
Participants: Fred Dumont
Katherine McCabe (or designee), Commissioner of the Department of Environmental Protection
State Treasurer Elizabeth Maher Muoio (or designee)

The Real Estate Committee reviews all monthly real estate matters with Authority exposure prior to the Board meeting.

Incentives Committee - *Chair: State Treasurer Elizabeth Maher Muoio (or designee)*
Participants: Kevin A. Quinn
Executive Branch Designee
Robert Asaro-Angelo (or designee), Commissioner of Labor and Workforce Development

The Incentives Committee meets monthly to review all significant non-direct exposure incentive requests, including but not limited to tax credits.

Policy Committee - *Chair: Kevin A. Quinn*
Participants: Charles Sarlo
State Treasurer Elizabeth Maher Muoio (or designee)
Executive Branch Designee
Robert Asaro-Angelo (or designee), Commissioner of Labor and Workforce Development
Marlene Caride (or designee), Commissioner of the Department of Banking and Insurance

The Policy Committee provides advice on policy matters, the formulation of the Authority's annual strategic business plan and marketing strategy. The committee will meet monthly and at such other times as determined by the Chief Executive Officer (CEO) in consultation with the Chair.

Staff Appointments

The Members are requested to reaffirm the appointment of Marcus Saldutti as OPRA Custodian and the appointment of Fred Cole as Ethics Liaison Officer.

Board Schedule

The Members are requested to approve the attached schedule of the monthly Board meetings through September 2020.

Recommendation:

By resolution we will be adopting this schedule for the next year's Board meeting dates.

The Members approval is requested for the following actions: 1) Committee appointments as noted above; 2) Appointment of the Assistant Secretaries; 3) Election of a Vice Chair and Treasurer; and 4) the reaffirmation of OPRA Custodian and Ethics Liaison Officers.

Kevin A. Quinn

Attachment

Prepared by: Patience Purdy

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

2019 – 2020 BOARD MEETING DATES

Tuesday, October 8, 2019

Thursday, November 14, 2019

Tuesday, December 10, 2019

Tuesday, January 14, 2020

Tuesday, February 11, 2020

Tuesday, March 10, 2020

Tuesday, April 14, 2020

Tuesday, May 12, 2020

Tuesday, June 9, 2020*

Thursday, July 14, 2020

Tuesday, August 11, 2020

Tuesday, September 8, 2020

All meetings are held from 10 – 12 Noon in EDA Boardroom (36 West State Street, Trenton), unless otherwise noted.

*** Location TBD**

SCHEDULE IS SUBJECT TO CHANGE

OFFICE OF ECONOMIC TRANSFORMATION

NJEDA

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: September 12, 2019

SUBJECT: Technology Business Tax Certificate Transfer Program:
2019 Program Approvals

BACKGROUND

The Technology Business Tax Certificate Transfer (NOL) Program allows technology and biotechnology companies with fewer than 225 employees in the U.S. and with certain minimum number of full-time employees in the State to sell their net operating losses and/or research and development tax credits to profitable corporate entities. Proceeds from those sales are required to be re-invested in the seller's business.

2019 PROGRAM CYCLE

This year marks the 21st anniversary of the Technology Business Tax Certificate Transfer (NOL) Program. Over the last two decades, over 540 unique companies have been awarded a total benefit amount of more than $1 billion. As in previous Program years, a benefit pool of $60 million is available to be distributed in State Fiscal Year 2019-2020. Of this $60 million, $10 million is reserved for the surrender of transferable tax benefits exclusively by eligible companies operating within the boundaries of the State's three (3) Innovation Zones (technology clusters fostering business-university collaboration located in Camden, Newark and the Greater New Brunswick Area).

This year, the Authority received applications from 54 companies requesting a total benefit amount of $78,159,923for the 2019 Program.

Program highlights for this year include:

- A 4% increase in the number of applications vs. last year, and the highest total in the past 5 years.
- The total benefit amount requested is the highest since 2014, a 7.44% increase from 2018.

- In this year's program there are 23 applicants (43%) that have identified themselves as technology companies, while the remaining 31 applicant companies (57%) selected that they were biotechnology companies.
- Private companies comprised 38 (66.66%) of the applicant pool while the remaining 18 (33.33%) were publicly traded.
- Included in this year's applicant pool, were 6 companies located in an Innovation Zone.
- There are 31 returning applicants from last year's Technology Business Tax Certificate Transfer (NOL) Program, additionally 5 more are returning after at least one year away from the Program.
- Most notable, is the participation of ***18 companies new to the program***, a 20% increase of new applicants from the prior year (15 new), and a 64% increase from the 2017 program (11 new).

Attachment A shows the 40 applicants that are recommended for approval in September for the 2019 Program. Staff is holding four additional applications as we confirm good standing with our government partners. We expect to present them at the October Board meeting. This total of 44 applicants are estimated to receive a total of $60,000,000, giving an approximate average award of $1.36 million per applicant. The threshold eligibility items for an application are specified in Attachment B. Attachment C will lay out the 3 companies that staff is unable to recommend for approval due to a lack of evidence to meet the legislative requirements of the program. During the due diligence process, 7 companies decided to withdraw their applications from the program.

<u>RECOMMENDATION:</u>

Based on evaluations by Authority staff, approval is recommended for the listed applicants on Attachment A, which have been evaluated according to the criteria established by the legislation. Disapproval is recommended for applicants on Attachment C due to a lack of evidence to support the required eligibility criteria for approval.

Tim Sullivan, CEO

Prepared by: Matthew Fields

Attachment A:			**NJ**	**Total**	**Applicant**
Recommended Approvals		**Business Description**	**Employees at 6/30**	**Employees at 6/30**	**HQ or Base**
1	Acreto Cloud Corp	Acreto (a new applicant) delivers a cloud-based platform to enable cyber security protection for Internet of Things, Ecosystems, including devices, users and applications.	3	4	Jersey City
2	Acuitive Technologies	Acuitive Technologies, Inc. is devoted to pursuing material technologies to improve medical device performance and patient outcomes.	16	18	Allendale
3	Admera Health LLC	Admera Health is an advanced molecular diagnostics company focused on personalized medicine and non-invasive cancer testing.	66	70	South Plainfield
4	Angel Medical Systems	Angel Medical has developed the first ever implantable, patient alerting system for the early detection and prevention of heart attacks.	19	19	Eatontown
5	Arable Labs Inc	Arable enables agricultural enterprises with real-time continuous visibility and predictive analytics of crop growth, harvest timing, yield, and quality based on in-field Arable Mark measurement.	6	25	Princeton
6	Bellerophon Therapeutics	Bellerophon Therapeutics is a clinical-stage therapeutics company focused on developing innovative products that address significant unmet	17	18	Warren

		medical needs in the treatment of cardiopulmonary diseases.			
7	Celsion Corporation	Celsion is a fully-integrated development stage oncology drug company focused on advancing a portfolio of innovative cancer treatments, including directed chemotherapies, DNA-mediated immunotherapy and RNA based therapies.	12	27	Lawrenceville
8	Celularity, Inc.	Celularity (a new applicant) is a stage cell therapeutics company delivering transformative allogeneic cellular therapies, engineered from the postpartum human placenta, in cancer immunotherapy and functional regeneration.	119	174	Warren
9	Chromocell Corporation	Chromocell (a new applicant) is a life sciences company which improves consumer products and patient lives through breakthrough science and technologies.	19	49	North Brunswick
10	CorMedix Inc	CorMedix Inc. is a biopharmaceutical company focused on developing and commercializing therapeutic products for the prevention and treatment of infectious and inflammatory diseases.	10	22	Berkeley Heights
11	CytoSorbents	CytoSorbents is a critical care focused immunotherapy company using blood purification to treat deadly inflammation in hospitalized patients	75	83	Monmouth Junction

		around the world, with the goal of preventing or treating multiple organ failure in life-threatening illnesses and cardiac surgery.			
12	Duet Microelectronics	Duet Microelectronics, Inc. (a new applicant) is a semiconductor company that is focusing on designing and developing integrated circuits (ICs) and the underlying semiconductor technology for advanced wireless and wired telecommunications applications.	5	5	Raritan
13	electroCore, Inc	ElectroCore (a new applicant) is a commercial-stage bioelectronic medicine company with a proprietary non-invasive vagus nerve stimulation, or nVNS, therapy.	29	50	Basking Ridge
14	Elite Laboratories	Elite Laboratories is a specialty pharmaceutical company primarily engaged in the development of a range of opioid products that contain Elite's patented and proprietary abuse resistance and controlled release technologies.	35	35	Northvale
15	Engage Therapeutics	Engage Therapeutics is primarily focused on the development of Staccato® Alprazolam, a medical device designed for the treatment of epilepsy in a single-use, disposable inhaler.	2	7	Summit
16	EOS Energy Storage	Eos Energy Storage was founded in 2008 and is headquartered in Edison,	84	96	Edison

		NJ. The Company develops innovative, low-cost energy storage solutions for the electric utility industry, as well as commercial and industrial ("C&I") end users.			
17	Flowonix Medical Incorporated.	Flowonix is a medical device company that manufactures an implantable and programmable drug pump designed to deliver specific doses of therapeutic drugs into the spine to help patients who suffer from chronic disorders.	29	106	Mount Olive
18	Hemispherx Biopharma	Hemispherx Biopharma is a bio pharmaceutical company engaged in the manufacture and clinical development of new drug entities for treatment of viral and immune-based disorders.	20	35	Riverton
19	Hope Portal Services, Inc DBA Hope Trust	Hope Portal Services, Inc., (a new applicant) is a health-tech/fin-tech startup that provides both concierge and fiduciary services, company that designs and develops solutions for financial services. Hope's IP relates to a computing platform (code) for securing sensitive data and safely sharing it with third party resources.	6	6	Holmdel
20	Inpensa Inc.	Inpensa (a new applicant) is a technology company that delivers an enterprise software solution to its Fortune 2000 customers. Inpensa has developed its	12	15	South Plainfield

		proprietary software onsite at its bruns Jersey headquarters. The combined solutions are collectively called Inpensa Business Case Management (BCM) Suite.			
21	IoTecha Corp	IoTecha is a developer of a hardware, software and cloud integrated platform designed for the Electric Vehicle smart charging infrastructure.	7	10	Piscataway
22	Malbec Solutions Inc DBA Malbek	Malbek <u>(a new applicant)</u> is a cloud-based contract management technology solution that uses AI to help organizations better manage their contracting process from request, authoring, review, approval, redline negotiation, signature and post execution tracking.	1	6	Somerset
23	Matinas Biopharma	Matinas BioPharma is a clinical-stage biopharmaceutical company focused on advancing a lipid nano-crystal (LNC) drug delivery platform to solve complex challenges relating to the delivery of small molecules, gene therapies, vaccines, proteins, and peptides.	17	18	Bedminster
24	MDSeq Inc.	MDSeq Inc. <u>(a new applicant)</u> is developing a proprietary technology that will detect cancer at an early, treatable stage, using a standard blood sample (a "liquid biopsy").	3	3	Union

25	MDX Medical DBA Sapphire Digital	MDx Medical developed and created software that provides increased transparency around medical cost and quality information.	92	185	Lyndhurst
26	Nanotech Industrials	Nanotech Industrials is involved with the technology- research, development and manufacturing of Nano sized particles of Inorganic Fullerene-like Tungsten Disulfide for wear reduction and enhanced performance in machinery and equipment	13	13	Avenel
27	Nephros	Nephros is a commercial stage company that develops and sells high performance water purification products to the medical device and commercial markets.	12	21	South Orange
28	Niksun Inc.	NIKSUN develops and sells products that provide network performance monitoring and network security surveillance solutions	102	116	Princeton
29	Ocean Power Tech.	Ocean Power Tech focuses on ocean wave power conversion technology. Their PowerBuoy® harnesses the renewable energy of ocean waves and converts it into clean, environmentally beneficial electricity.	31	39	Monroe Township
30	Oncosec Medical	OncoSec <u>(a new applicant)</u> is a clinical-stage biotechnology company focused on developing cytokine-based intra-tumoral immunotherapies	12	41	Pennington

		to stimulate the body's immune system to target and attack cancer			
31	Outlook Therapeutics fka Oncobiologics	Outlook Therapeutics is a late clinical stage biopharmaceutical company focused on developing and commercializing ONS-5010, a complex monoclonal antibody ("mAb") therapeutic for various ophthalmic indications.	39	41	Cranbury
32	Provention Bio, Inc	Provention Bio, Inc. is a clinical-stage developing novel therapeutics aimed at intercepting and preventing immune-mediated diseases.	4	15	Lebanon
33	Prazas Learning Inc	Prazas Learning Inc. is an education technology company offering online training, assessments and tutoring to school and college students.	10	11	Kendall Park
34	Scynexis, Inc	Scynexis is focused on innovative therapies for difficult-to-treat and often life-threatening infections. Their lead product, ibrexafungerp, has the potential to effectively treat multiple serious fungal infections. ,	24	24	Jersey City
35	Solidia	Solidia is a cement and concrete technology company with patented processes that make it easy and profitable to use C02 to create superior and sustainable building materials.	68	69	Piscataway
36	Soligenix	Soligenix is a late-stage biopharmaceutical	14	17	Princeton

		company focused on developing and commercializing products to treat rare diseases where there is an unmet medical need.			
37	Svelte Medical Systems	Svelte Medical Systems, Inc. is a privately held company engaged in the design and development of highly deliverable balloon expandable stents.	18	19	New Providence
38	TrialScope	TrialScope is engaged in providing proprietary software to clinical trial sponsors to comply with evolving legislation and internal policies, to register clinical trials, and improve global disclosure processes.	37	41	Jersey City
39	United Silicon Carbide Inc. (USC)	UnitedSiC is commercializing silicon carbide power devices (SiC). SiC is a wide band-gap semiconductor that is much more energy efficient and extremely temperature resistant compared to silicon.	23	26	Monmouth Junction
40	Valeritas	Valeritas (a new applicant) is a commercial-stage medical technology company focused on improving health and simplifying life for people with diabetes by developing and commercializing innovative technologies.	11	142	Bridgewater

Attachment B - NOL Threshold Eligibility Requirements

Each applicant must meet each of the legislative requirements below.

- "Biotechnology business"
  a. "headquarters or base of operations located in New Jersey".
  b. "that owns, has filed for, or has a license to use protected, proprietary intellectual property and whose primary business is the research, development, production, or provision of biotechnology for the purpose of developing or providing products or processes for specific commercial or public purposes, including, but not limited to, medical, pharmaceutical, nutritional, and other health-related purposes, agricultural purposes, and environmental purposes.".

- "Emerging technology business"
  a. "headquarters or base of operations located in New Jersey".
  b. "that owns, has filed for, or has a license to use protected, proprietary intellectual property whose primary business is the provision of a scientific process, product, or service and that employs some combination of the following: highly educated and/or trained managers and workers employed in New Jersey who use sophisticated scientific research, service or production equipment, processes or knowledge to discover, develop, test, transfer or manufacture a product or service."

- "New or expanding" - "On June 30 of the year in which the company files an application for surrender of unused but otherwise allowable tax benefits under P.L.1997, c.334 (C.34:1B-7.42a et al.) and on the date of the exchange of the corporation business tax benefit certificate," a company must have
  a. fewer than 225 employees in the United States of America; (In calculating the number of employees under this definition, employees of all affiliates and subsidiaries as shown on its consolidated financial statements, employees of any company that owns or controls at least 50 percent of the applicant, as well as the employees of any consolidated group of affiliated corporations as filed for Federal income tax purposes shall be included.)
  b. at least one <u>full-time employee</u> working in this State if the company has been incorporated for less than three years
  c. at least five <u>full-time employees</u> working in this State if the company has been incorporated for more than three years but less than five years
  d. at least 10 <u>full-time employees</u> working in this State if the company has been incorporated for more than five years

- "Full-time employee" - means a person employed by a new or expanding emerging technology or biotechnology company
  a. on a permanent or indefinite basis
  b. for consideration for at least 35 hours a week
  c. whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq
  d. "or who is a partner of a new or expanding emerging technology or biotechnology company who works for the partnership for at least 35 hours a week… and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq"
  e. A "Full-time employee" must also be considered a "Full-time employee working in this State" which means a full-time employee whose primary office is in New Jersey and who spends at least 80 percent of his or her time in New Jersey.
  f. It shall not include any person who works as an independent contractor or on a consulting basis for the new or expanding emerging technology or biotechnology business; or any person who works as an intern, as a temporary employee, or in a temporary position.
  g. To qualify as a "full-time employee," an employee shall also receive from the new or expanding emerging technology or biotechnology company health benefits under a group health plan as defined under section 14 of P.L. 1997, c. 146 (N.J.S.A. 17B:27-54), a health benefits plan as defined under section 1 of P.L. 1992, c. 162 (N.J.S.A. 17B:27A-17), or a policy or contract of health insurance covering more than one person issued pursuant to Article 2 of chapter 27 of Title 17B of the New Jersey Statutes.

- "Financial statements"
  a. Application must include a Draft or Final prepared Financial Statement.
  b. Applicant cannot be approved if it "Has demonstrated positive net operating income in any of the two previous full years of ongoing operations as determined on its financial statements".
  c. Must meet the definition of a "Financial Statement" which is defined as "a statement prepared by an independent Certified Public Accountant (CPA), which shall include an opinion letter indicating the scope of the services performed (compilation, review, or audit) in accordance with Generally Accepted Accounting Principles (GAAP) as determined by the Financial Standards Accounting Board (FASB) and shall include a balance sheet, statement of income and expenses, cash flow statement, other statements as determined by the independent CPA, and footnotes where applicable".
  d. If an applicant submits a draft Financial Statement, the Final Financial Statement must be received no later than July 31st of the program year.

e. If an applicant submits a draft Financial Statement, the Final Financial Statement must include no material changes from the Draft submitted at application.
f. If an applicant "Is directly or indirectly at least 50 percent owned or controlled by another corporation" then the controller must also follow steps A-E.

- "Protected Proprietary Intellectual Property" –means intellectual property that is
  a. the technology of the applicant's primary business as a technology or biotechnology business
  b. protected via a patent pending,
  c. protected via a patent awaiting approval,
  d. protected via an approved patent,
  e. or protected via a registered copyright

- Applicant must provide all applicable documentation to the NJEDA and any additional clarifying items that the NJEDA deems as necessary.

Attachment C
Disapprovals:

BioAegis Therapeutics Incorporated – is a development stage biotechnology company pursuing human therapeutic applications of rhu-plasma gelsolin

Recommendation – Due to a lack of evidence to show applicant meets NOL threshold eligibility requirements #4b ("Full-time employee" - means a person employed by a new or expanding emerging technology or biotechnology company for consideration for at least 35 hours a week) and #4e (A "Full-time employee" must also be considered a "Full-time employee working in this State" which means a full-time employee whose primary office is in New Jersey and who spends at least 80 percent of his or her time in New Jersey) on Attachment B, staff is unable to recommend an approval.

Program eligibility for this Company requires 10 employees meeting the program definition of "Full-time employee working in this State".

The applicant has 10 employees total. Two of the company's employees do not clearly meet the program definition of a full-time employee as supported by independent third-party documentation. The applicant was informed this recommendation after initial review and additional items were requested, however additional items received still did not clearly meet program definitions.

Employee 1

- NY Resident
- Does not own a car
- Applicant was reminded ahead of application deadline about the verification of 80% of time in NJ for this employee.
- Provided information stating that she has been living with her mother in NJ to help care for her and was borrowing her mother and sister's car to occasionally go back to her residence in NY.
- Provided EZ pass statements from 3 people including her Father (formerly), Sister, and Brother-in-law. Travel time on the provided EZ pass statements did not support verification of any sort of pattern to accurately conclude 80% of time spent in NJ as required by program legislation.
- After internal discussion meeting the conclusion was there was not enough evidence to move forth with an approval.
- Applicant subsequently provided letter from employee's mother and a personal email of explanations.

Employee 2

- Husband of CEO
- Added to the staff immediately prior to their last NOL program application in 2015.
- Paid minimum wage, for total annual compensation of $17,873 per employee log. Pay stub indicates $18,406.
- Staff unable to secure documentation to support program requirement 4b "for consideration for at least 35 hours a week".
- After internal discussion meeting the conclusion was there was not enough evidence to move forth with an approval. CEO subsequently provided letter highlighting employee's responsibilities.

The applicant was informed about staff's recommendation for disapproval and invited to submit additional documentation that might satisfy the threshold eligibility requirements. To date, no additional documentation that would satisfy the threshold eligibility requirements has been supplied. The applicant was given the option to withdraw their application and has chosen to move forward with board consideration.

Caladrius Biosciences, Inc. - is a late-stage therapeutics development biopharmaceutical company pioneering advancements of cell therapies in select cardiovascular and autoimmune diseases.

Recommendation – Due to a lack of evidence to show the applicant meets the NOL threshold eligibility requirements #4b #4e (A "Full-time employee" must also be considered a "Full-time employee working in this State" which means a full-time employee whose primary office is in New Jersey and who spends at least 80 percent of his or her time in New Jersey) on Attachment B, staff is unable to recommend an approval.

Program eligibility for this Company requires 10 employees meeting the program definition of "Full-time employee working in this State".

The Company has nine full time employees which meet the program definition. The company's tenth employee is a resident of New York. The company provided 2 CEO letters stating the employee meets the program definition along with a PEO letter and personal bank statements for the employee plus a security access record. The bank statements and security access records did not establish a pattern of 80% of time in NJ, and in fact showed a general pattern of 2-3 days a week.

There is not sufficient independent documentation provided to determine that the employee's primary office is in New Jersey and that he/she spends at least 80 percent of his or her time in New Jersey, or who spends any other period of time generally accepted by custom or practice as full-time employment in New Jersey, as determined by the Authority.

The applicant was informed about staff's recommendation for disapproval and was invited to submit additional documentation that might satisfy the threshold eligibility requirements. To date, no additional documentation that would satisfy the threshold eligibility requirements has been supplied. Applicant was invited to withdraw their application and has chosen to move forward for board consideration.

Phosphorus Diagnostics –is a genetic testing company empowering individuals with insights from their genome. They build best-in-class genetic tests, with input from leading clinical experts, to identify human disease.

Recommendation – Due to a lack of evidence to show the applicant meets NOL threshold eligibility requirement 6a ("Protected Proprietary Intellectual Property" –means intellectual property that is the technology of the applicant's primary business as a technology or biotechnology business) on Attachment B, staff is unable to recommend an approval.

1. It cannot be determined if the copyright presented by the company as "Protected proprietary intellectual property" is the primary business of the applicant as required by "§ 19:31-12.4 Application to the program (c) #8".

Per the company's explanation - (Phosphorus provides various genetic tests. Doctors enter info via the website which dictates the types of tests conducted by Phosphorus. Then, once completed, they present the data back to doctors regarding the findings for their patients. This interface, process, and presentation is what differentiates them from other genetics companies and proprietary, so this is what has been protected via the copyright.)

For documentation, the company presented a copyright submission that specifies "Phosphorus Diagnostics Website" as well as their written business description.

There was not sufficient evidence to confirm the applicant's Protected Proprietary Intellectual Property is primary to their business allowing them to meet the legislative definition of either a technology or biotechnology business.

The applicant was informed about staff's recommendation for disapproval and invited to submit additional documentation that might satisfy the threshold eligibility requirements. To date, no additional documentation that would satisfy the threshold eligibility requirements has been supplied. Applicant was invited to withdraw their application and has chosen to move forward for board consideration.

NJ EDA

MEMORANDUM

To: Members of the Authority

From: Tim Sullivan

Date: September 12, 2019

Subject: Venture Fund Program – Policy Updates

Request:
Approve an update to the EDA's current venture fund investment policy to include the addition of a fourteenth bonus rating criteria, Diversity & Inclusion, and recommend clarifications to specific existing rating criteria to improve clarity and accuracy in the venture fund risk rating model.

Background:
In August 2016, the Authority's board approved an updated Venture Fund Policy, including, the implementation of the Venture Fund Rating Matrix as a new element in the underwriting process when considering the Authority's potential investment as a Limited Partner in venture capital funds. The approved rating model was devised from a culmination of the EDA's 20 year experience investing in venture funds, and substantial research from industry trade organizations, like the Institutional Limited Partners Association and the National Venture Capital Association ("NVCA"), and the best practices of respected individual and institutional investors including, for example, insurance companies, investment banks, private and public pension funds, sovereign wealth funds, etc. The rating tool serves as one element in the Authority's investment analysis. In accordance with the Authority's current Venture Fund Investment Policy, the venture fund rating tool uses thirteen objective criteria in examining a venture capital firm and fund for prospective commitment. This objectivity allows reviewers to clearly articulate the qualities of an offering and assign a score. The resulting output offers a suggested commitment amount, subject to the Authority's long-term, patient capital available. Having clearly defined rating criteria is paramount in the model to ensure a consistent, efficient and equitable process. This also creates, for both the Authority and the applicant, a productive level of transparency to communicate a distinct outcome of the decision-making process.

Since the approval of the Venture Fund Investment Policy in August 2016, the Authority has committed to three venture funds (Newark Venture Partners, Tech Council Ventures II and Edison IX) for total commitments of approximately $8.6M.

Staff recommends the Board consider approving the request to update the Venture Fund Policy, including the addition of a fourteenth criteria – Diversity and Inclusion – and modifying language of the Venture Fund Risk Rating model to create additional clarity in the scoring categories. These updates are reflective of both the changing venture capital industry environment, historically, limited in diversity and inclusion, and the EDA Venture Fund Investment Policy's alignment with Governor Murphy's Economic Development Plan goal to create the most diverse innovation ecosystem in the nation.

The venture industry has long suffered from a lack of diversity and inclusion. We are at an important juncture in history at which the industry begins to adopt policies and practices to progress from this position. This change is already being led by some industry groups like the NVCA through their Venture Forward initiative.[1] The NVCA is a prominent global trade organization in the venture capital industry. The additional modifications to the model will further enhance the functionality of the rating matrix. Such revisions are a function of ongoing policy and process improvement. The proposed changes are outlined below.

Venture Fund Policy Update

EDA has committed more than $51M in 16 venture capital funds in the last 20 years. These investments have generated more than 5,000 jobs in NJ and resulted in a private sector capital multiplier in excess of 50x the amount of EDA capital invested in the State. EDA last conducted revisions to the venture fund investment policy in 2016, coincident with the implementation of the venture fund rating matrix to assist in the allocation decision to VC funds. This tool was implemented to enhance the robustness of EDA's venture fund investment evaluation methodology and to create process efficiencies.

This new addition of a Diversity and Inclusion criteria, and clarifying updates, are recommended to further strengthen our process and create a fairer policy that aligns with the objective to support the innovation economy in New Jersey. This criterion is designed to recognize the deliberate efforts of investors who have institutionalized policies and practices to invest with high caliber management teams with a consideration for diversity & inclusion. In turn, this effort leads to additional capital funding to accomplish the fourth goal of the Governor's Economic Development Plan – closing the racial and gender wage and employment gaps. The result of these efforts will support deployment of more venture capital from private sector investors into a more diverse set of companies growing in New Jersey.

New Jersey has lagged the rest of the nation in the growth of women-owned and minority-owned businesses, ranking 33rd nationwide in the growth of women-owned firms since 2007 and 30th in the growth of minority-owned businesses since 2014. With the addition of the Diversity & Inclusion criteria, a venture capital firm's policies and past investment portfolios will be considered to identify the Manager's commitment to diversity and inclusion across the firm culture and the influence on investment strategy. As it stands today, the Venture Capital industry is one of the least diverse industries at both the investment management level and among venture-backed startups. Women-owned and minority-owned businesses make up a disproportionately small percentage of emerging technology business, with estimates as low as one percent of funded emerging technology business owned by African Americans and eight percent of funded emerging technology business owned by women. In 2017, for example, women-led startups received just 2% of venture capital investment, according to the NVCA. Looking at the investment firms themselves, minorities represent just 22% of investment professionals. Managers

1 https://nvca.org/ecosystem/ventureforward/

with strong diversity policies in place, and that demonstrate an inclusive culture, tend to align well with the objective to create a diverse innovative ecosystem in the State. In addition, statistics show there is a high probability of producing an outsized return when decisions are made with a consideration to different viewpoints and experiences.

The definitions of Diversity & Inclusion may vary widely in consideration to the venture capital and investment landscape. To date there is no single metric against which investment firms base this assessment. Consideration of this metric with regard to fund evaluation as a policy puts the NJEDA at the forefront of institutionalizing this practice and recognizing the benefit of diversity and inclusion. The concepts selected here are, largely, presented by the Centre for Global Inclusion (http://centreforglobalinclusion.org/), a Las Vegas, NV-based research and education organization that created the Global Diversity & Inclusion Benchmarks ("GDIB") publication. This is a respected source referenced by many organizations since its initial release in 2006, through its latest revision in 2017. The definitions presented by the GDIB for Diversity and Inclusion:

> **Diversity** refers to the variety of similarities and differences among people, including but not limited to: gender, gender identity, ethnicity, race, native or indigenous origin, age, generation, sexual orientation, culture, religion, belief system, marital status, parental status, socio-economic difference, appearance, language and accent, disability, mental health, education, geography, nationality, work style, work experience, job role and function, thinking style, and personality type. Inclusion of various diversity dimensions may vary by geography or organization.
>
> **Inclusion** is a dynamic state of operating in which diversity is leveraged to create a fair, healthy, and high-performing organization or community. An inclusive environment ensures equitable access to resources and opportunities for all. It also enables individuals and groups to feel safe, respected, engaged, motivated, and valued, for who they are and for their contributions toward organizational and societal goals.

From these definitions, we offer the proposed fourteenth criteria for addition to the rating matrix:

> **Diversity & Inclusion:** Venture Capital Firm policies and past investment portfolio are considered to identify commitment to diversity and inclusion across the firm culture and the impact on investment strategy.

Consideration in the rating model is given to the fact that investment management teams and companies at the EDA's targeted investment stage (early-stage, less than $3M in revenue) tend to be organizationally immature and thinly resourced. This often results in a lack of transparency with regard to the topic of diversity & inclusion at the firm level. To mitigate this issue and support evaluation of this criteria, EDA has developed an eighteen question self-reported survey to examine the policies and investment record of the venture capital firm. This survey is based on the research conducted, principally from PWC, the Centre for Global Inclusion and is modified from the 2020 Bloomberg Gender-Equality Index Framework.[2] The survey is constructed to capture the most relevant details of a private market investment firm's policies and investment practices for the purpose of the evaluation criterion and reference for potential future refinements of the evaluation process. The survey is meant to capture insight on the VC firm and the past portfolio companies both. The VC Firm's employment base and policies are regarded to offer a potential risk reduction bonus. EDA Staff will look to a VC's past portfolio to recognize how many of the companies represented diverse management or ownership teams and ascertain the degree of diversity in the Manager's portfolio for reference only.

Venture Capital firms will self-report on the requested survey. The responses to question numbers 1, 2, 3 and 4 below will be reviewed to offer a potential risk reduction score bonus:

1. Does the firm have a stated diversity and inclusion policy which serves as a guiding document for the organizational practices of the firm?
2. Does the VC firm have a named senior executive with the primary function of managing the firm's diversity and inclusion policy?
3. Does the firm have a consideration or stated goal for diversity & inclusion when making new investments?
4. If the firm has a consideration or stated goal for diversity & inclusion when making new investments, can it verify it has achieved this goal?

Additional questions will be posed to the manager to ascertain information regarding diversity & inclusion exposures. This information will not be scored or considered in evaluation in any way. This data is purely for research purposes to, potentially, inform future refinements in the evaluation process. The comprised of the additional 14 questions may be updated from time to time.

Recommendation

The above policy update and proposed changes are submitted with a recommendation that will enhance the EDA's already robust venture fund investment review process. Implementation of these measures will refine the set of rules to direct Authority capital in venture investing and encourage additional private sector investment in targeted sectors within New Jersey's innovation economy.

Attachments

Prepared by: Madhavi Bhatia
Timothy B. Rollender

2 https://data.bloomberglp.com/company/sites/46/2019/05/EXEC_GEI_Index_GenderReportingFramework_PDF_V6.pdf

INCENTIVE PROGRAMS

GROW NEW JERSEY ASSISTANCE PROGRAM (GROW NJ) MODIFICATIONS

NJ EDA

MEMORANDUM

To: Members of the Authority

From: Tim Sullivan
Chief Executive Officer

Date: September 12, 2019

Subject: P39899-Princeton Tectonics ("PTEC") – Grow NJ – Modification

Request:
Consent to the reduction of Grow NJ eligible jobs to 174 from 215 as previously certified at project completion.

As a result of this request, the Grow NJ award will be decreased from $18,315,000 to $7,622,712 ($10,752,500 as per grant calculator but capped by the Net Benefit to the State), and a corrected tax credit will be issued.

The Members are asked to approve this action because it exceeds the criteria for staff delegation to approve these matters.

Background:
Princeton Tectonics ("Company") designs and manufactures outdoor lighting equipment. It offers scuba, bike, outdoor, industrial, and tactical lighting products through wholesalers and outdoor equipment retail stores.

On October 14, 2014, the Members of the Authority approved a ten (10) year, $18,315,000 Grow NJ award to incent the retention of 95 at risk jobs and the creation of 156 new full-time jobs (for a total of 251 jobs), associated with the company's expansion and relocation of its manufacturing and headquarters to Pennsauken, New Jersey. The capital investment to complete the project was more than $3.8 million.

In 2018, the Company certified it had met its capital investment, created 120 new jobs and retained 95 jobs, 41 of which were employed through a Professional Employment Organization ("PEO") that was not presently registered with the NJ Department of Labor and Workforce Development ("DLWD"). As jobs may only be incented when they are directly employed by the applicant or a licensed PEO, staff advised the company of the issue. PTEC chose to work with the PEO on the required NJ licensing. As PTEC provided documentation that the PEO applied to DLWD for licensing of the PEO co-employer's group of entities, EDA accepted the company's project certification (based on 215 jobs). Upon receipt of DLWD approval, the project certification was advanced to Taxation for issuance of the Grow NJ Aggregate Tax Credit of $18,315,000. No aggregate or annual tax credit has been issued to date.

Presently, during the due diligence review of the project file, staff identified that the DLWD licensing approval was limited to the PEO's controlling entity only and did not include the specific PEO entity hired by PTEC for the 41 employees. PTEC was notified and afforded the opportunity to cure this deficiency regarding its PEO. However, the PEO was unable to obtain a license from DLWD. As a result, the 41 new jobs that were paid by the PEO are not eligible under Grow NJ incentive, and we are recommending a reduction to the Company's aggregate tax credit to $7,622,712. Additionally, the Company submitted its annual report which will be corrected to reflect the reduction in the PEO jobs.

This modification is being presented to the Members for consideration since the reduction in jobs exceeds the 25% limit under delegated authority.

This decrease in jobs below 251 results in a loss of the $500 Bonus for Large Number of New/Retained Jobs. Based on the reduction in jobs, the updated grant calculation is $10,752,500; however, based on the Net Benefit Test analysis, the award will be capped at $7,622,712, resulting in a Gross Benefit to the State of 110% of the award $7,622,712.

The award will decrease from $18,315,000 to $7,622,712 ($10,752,500 as per grant calculator, which accounts for the loss of the $500 bonus for Large Number of New/Retained Jobs, resulting in a $8,500 annual award per employee before the Net Benefit cap is applied.) Since the award is capped by the Net Benefit Test, the maximum annual credit per job is $6,025 for new employees.

Summary of Project Changes

	At Approval	At Certification (as corrected)
Proposed Jobs	156 (New) 95 (Retained)	79 (New) 95 (Retained)
Median Salary	$ 17,725	$ 17,888
Eligibility Min. Cap-Ex	$1,037,653	$1,037,653
Proposed Cap-Ex	$3,650,220	$3,780,626
Base Amount:	$ 4,000	$ 4,000
Bonus Increases:		
Capital Investment in Excess Of Minimum	$ 3,000	$ 3,000
Targeted Industry (Manufacturing)	$ 500	$ 500
Large Number of New/Retained	$ 500	$ 0

Full-Time Jobs (251 required)		
2007 Revit. Index>465 in Camden County	$ 1,000	$ 1,000
Total Amount per Incented Employee	**$ 9,000**	**$ 8,500** **$ 6,025***
Award Amount:	**$18,315,000**	**$10,752,500** **$ 7,622,712***
Gross Benefit to the State (Over 20 Years, Prior to Award):	$44,516,893	$ 8,384,983
Net Benefit to the State (Over 20 Years, Net of Award):	$26,201,893	$ 762,271

***as capped by the Net Benefit to the State**

Recommendation:
Consent to the reduction of Grow NJ eligible jobs to 174 from 215 as previously certified at project completion.

As a result of this request, the Grow NJ award will be decreased from $18,315,000 to $7,622,712 ($10,752,500 as per grant calculator but capped by the Net Benefit to the State), and a corrected tax credit will be issued.

The Members are asked to approve this action because it exceeds the criteria for staff delegation to approve these matters.

Prepared by: Thomas Armento

BOND PROJECTS

BOND RESOLUTIONS

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY - STAND-ALONE BOND PROGRAM

APPLICANT: Black Horse EHT Urban Renewal LLC P45415

PROJECT USER(S): Same as applicant * - indicates relation to applicant

PROJECT LOCATION: 6817 East Black Horse Pike Egg Harbor City (T) Atlantic County

APPLICANT BACKGROUND:

Black Horse EHT Urban Renewal LLC is a recently formed entity comprised of ALFNJ, LLC, CDP Entity/Carding Group and Shelter American Holdings, Inc., as members of Black Horse ALR, LLC, the managing member. Drew A. Barile, CEO of Ashore Property Management and Eric Wolf of WolfCo. formed ALFNJ to develop and own affordable assisted living projects, each owner with experience in the development and management of senior healthcare and housing related facilities. Members of CDP Entity/Carding Group have participated in the financing and development of 20 affordable assisted living communities since 2013. Shelter American Holdings, a privately held company responsible for the management of approx. 2.7 million sq. ft. of commercial space, will guarantee the obligations of the managing member under an operating agreement.

The project qualifies for tax-exempt bond financing as an Exempt Public Facility - Qualified Residential Project under Sections 142 (d) (2)and 142 (a)(7) of the Internal Revenue Code of 1986 as amended. The applicant will set aside 20% of the units in the project to individuals whose income does not exceed 50% of area median gross income.

APPROVAL REQUEST:

Authority assistance in tax-exempt and taxable bonds not to exceed $28 million, will enable the Applicant to acquire a 137-unit frame hotel structure of 48,750 sq.ft. located on 5 acres in Egg Harbor Township, Atlantic County, renovate and construct a 42,000 sq. ft. addition, to create a 160-unit (166-bed) assisted living facility, together with a 5,500 sq. ft. adult medical daycare with an 80-participant capacity (to be named New Standard Senior Living). The site will have a lobby area, kitchen, offices, main dining room, computer room, laundry room, library as well as fitness room, beauty/barber shop, and multi-purpose lounge. The Project also includes the renovation of a separate, significantly smaller 2-story building for use as offices (including medical offices). Proceeds of the Bonds will also be used to pay costs of issuing the Bonds, fund capitalized interest and other various funds and accounts.

The Department of Health has approved the Certificates of Need for the assisted living and adult daycare projects. The Department of Community Affairs is reviewing the construction plans. The Applicant has also applied for low-income housing tax credits administered by NJ Housing and Mortgage Financing Agency.

FINANCING SUMMARY:

BOND PURCHASER: UBS Financial Services Inc. (Underwriter)

AMOUNT OF BOND: $27,000,000 (estimated) Tax-exempt Series A Bond
2016, 2017 and 2018 Carryforward allocation

$1,000,000 (estimated) Taxable Series B Bond

TERMS OF BOND:	20 years; Fixed interest not to exceed 9%. Estimated interest rate as of 8/1/19 is 5.25%.	10 years; Fixed interest rates not to exceed 9%. Estimated rate as of 8/1/19 is 6.25%.

ENHANCEMENT: N/A

PROJECT COSTS:

Construction of new building or addition	$8,534,000
Renovation of existing building	$8,500,000
Developer's Fee	$4,100,000
Working capital	$4,050,000
Acquisition of existing building	$3,750,000
Interest during construction	$2,750,000
Debt service reserve fund	$1,550,000
Finance fees	$1,152,000
Engineering & architectural fees	$710,000
Soft Costs	$560,557
Purchase of equipment & machinery	$500,000
Land	$450,000
Legal fees	$380,000
Accounting fees	$30,000
TOTAL COSTS	$37,016,557

JOBS: At Application 0 Within 2 years 95 Maintained 0 Construction 139

PUBLIC HEARING: 08/13/19 (Published 08/06/19) **BOND COUNSEL:** Chiesa, Shahinian & Giantomasi,
DEVELOPMENT OFFICER: K. Durand **APPROVAL OFFICER:** T. Wells

COMBINATION PRELIMINARY AND BOND RESOLUTIONS

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY - STAND-ALONE BOND PROGRAM

APPLICANT: Friends of Vineland Public Charter School A NJ Nonprofit P45866

PROJECT USER(S): Vineland Public Charter School A NJ Nonprofit * - indicates relation to applicant

PROJECT LOCATION: 1480 Pennsylvania Ave. Vineland City (T/UA) Cumberland County

APPLICANT BACKGROUND:
Friends of Vineland Public Charter School a NJ Nonprofit Corporation, established in 2015, provides financial support and services to facilitate educational purposes and programs at affiliated public charter schools.

Vineland Public Charter School A NJ Nonprofit Corporation established 2008, is a 501(c)(3) not-for-profit organization established for the purpose of operating and maintaining a public school under a charter granted by the State of New Jersey. The School serves a population of 423 students in pre-kindergarten through the tenth grade. The School is in good standing with the Department of Education. Vanessa Phillips is the School's president.

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 1986 Internal Revenue Code as amended, and is not subject to the State Volume Cap limitation, pursuant to Section 146(g) of the Code.

APPROVAL REQUEST:
Authority assistance will enable the Applicant to reduce its interest expense by the refinancing of debt incurred for the facilities occupied by Vineland Public Charter School A NJ Nonprofit Corporation. The existing financing is through Education Capital Solutions, LLC and Vineland Project Development, LLC.

FINANCING SUMMARY:

BOND PURCHASER: RBC Capital Markets, LLC (Limited Offering Memorandum)

AMOUNT OF BOND:	Series A: $11,640,000 Tax-Exempt	Series B: $360,000 Taxable (Part of total $12,000,000 with Series A Tax-Exempt Bond)
TERMS OF BOND:	35 years; Fixed interest rate ranging from 5.00% to 6.125%. The Tax-Exempt A Bonds will be subject to a 10 year par call option.	35 years; Fixed interest rate ranging from 5.00% to 6.125%. The Taxable B Bonds will not be subject to optional redemption.

There is also a Net Premium of $372.00 on this bond issuance.

ENHANCEMENT: N/A

PROJECT COSTS:

Refinancing	$10,567,745
Debt service reserve fund	$832,175
Cost of Issuance	$350,000
Delivery Date Exps	$243,500
Other Uses of Funds	$6,952

APPLICANT: Friends of Vineland Public Charter School A NJ Nonprofit P45866 Page 2

TOTAL COSTS	$12,000,372

JOBS: At Application 90 Within 2 years 5 Maintained 0 Construction 0

PUBLIC HEARING: 08/13/19 (Published 08/06/19) **BOND COUNSEL:** Chiesa, Shahinian & Giantomasi,

DEVELOPMENT OFFICER: K. Durand **APPROVAL OFFICER:** S. Novak

LOANS/GRANTS/GUARANTEES

BROWNFIELD DEVELOPMENT LOAN PROGRAM

NJEDA

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: September 12, 2019

SUBJECT: Proposed Adopted Rule Amendments – Brownfields Loan Program

Request

The Members are requested to approve a proposed notice of adoption for amendments with non-substantial changes not requiring additional public comment and notice; and, to authorize staff to submit the proposed notice of adoption for promulgation in the New Jersey Register, subject to final review and approval by the Office of the Attorney General and the Office of Administrative Law (OAL).

Background

On June 3, 2019, a notice of proposed amendments to the EDA's rules establishing parameters for direct loan products that pertain to financial assistance available under a new Brownfields Loan Program were published in the New Jersey Register. The notice of proposal provided for a 60-day comment period during which one comment was received from the New Jersey Builders Association. The attached proposed notice of adoption provides a summary of the comment and the EDA's response thereto, which includes non-substantial changes not requiring additional public notice and comment intended to clarify provisions contained in the original proposal.

Recommendation

The Members approve the proposed notice of adoption with non-substantial changes not requiring additional public notice and comment and authorize staff to submit the notice for promulgation in the New Jersey Register, subject to final review and approval by the Office of the Attorney General and the Office of Administrative Law (OAL).

Tim Sullivan
Chief Executive Officer

Prepared By: Jacob Genovay

Attachment
- Proposed Notice of Adoption: N.J.A.C. 19:30-6.1 and 19:31-3.1 through 3.5

DRAFT

OTHER AGENCIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Administrative Rules; Fees; Authority Assistance Programs; Direct Loan Program

Adopted Amendments: N.J.A.C. 19:30-6.1 and 19:31-3.1 through 3.5

Proposed: June 3, 2019 at 51 N.J.R. 820(a).

Adopted: September 13, 2019 by the New Jersey Economic Development Authority, Tim Sullivan, Chief Executive Officer.

Filed: September 13, 2019 at R.2019 d.____, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 34:1B-1 et seq.

Effective Date: October 7, 2019.

Expiration Date: May 8, 2025.

Summary of Public Comment and Agency Response:

Grant Lucking, VP of Environmental Affairs, New Jersey Builders Association (NJBA)

COMMENT: NJBA strongly supports the increase in the maximum amount of financing available from $750,000 to $5,000,000 to help actualize remediation projects with funding gaps. The remediation and revitalization of brownfields has substantial environmental, economic and social benefits.

RESPONSE: The EDA thanks the NJBA for its support of the increase in financing available under the Brownfields Loan Program.

COMMENT: NJBA believes the Brownfields Loan Program should not require a letter of support from the mayor of the municipality provided that all appropriate preliminary approvals have been received from the municipality. NJBA notes that not all municipalities are required to have mayors, for instance, under the 1923 Municipal Manager Form of Government (N.J.S.A. 40-39.1 et seq.). Additionally, development approvals are not subject to mayoral approval. This requirement could delay or otherwise prevent the revitalization and remediation of brownfields.

RESPONSE: In recognition of the variable forms of municipal government in New Jersey, as noted by the commenter, the EDA has changed N.J.A.C. 19:31-3.3(c)9i to insert "or the governing body if the position of mayor does not exist" pursuant to the municipality in which the brownfield site is located.

COMMENT: In several instances, the notice of proposal requires the submission of an "environmental report" from a Licensed Site Remediation Professional (LSRP). The term "environmental report" is undefined and clarification should be provided regarding the extent of information an LSRP is required to provide. Additionally, at proposed new N.J.A.C. 19:31-3.3(c)9, it is unclear what type of professionals the requirement for environmental reports applies to.

RESPONSE: The EDA will change N.J.A.C. 19:31-3.2(c)2 and 3.3(c)9iv and v to address the concerns presented above.

N.J.A.C. 19:31-3.2(c)2 is changed to delete the terms "required" and "report" "pertaining to the licensed site remediation professional; and, delete the terms "other documentation from" and modifies the term qualified professional to add "other than a licensed site remediation professional" and "or the structure is a contaminated building" pertaining to a structure.

N.J.A.C. 19:31-3.3(c)9iv changes "environmental report" to "report" and replaces "applicable New Jersey Department of Environmental Protection requirements," with "pursuant to the Technical Requirements for Site Remediation at N.J.A.C 7:26E."

N.J.A.C. 19:31-3.3(c)9v changes the term "environmental report" to "report" and clarifies the content of the report by adding that the report must demonstrate to the satisfaction of the Authority that the structure on the brownfield adds is a contaminated building.

COMMENT: Proposed new N.J.A.C. 19:31-3.1(i)7i permits the EDA to reduce the rate of interest if, "[t]he redevelopment project has been designed as a mixed-use residential project consisting of newly-constructed residential units where the developer will reserve at least 20 percent, but not more than 50 percent, of the residential units constructed for occupancy by low- and moderate-income households with affordability controls as required under the rules of the Council on Affordable Housing." NJBA believes that this subsection should be modified to also include projects that are one hundred percent residential and not only projects which are mixed-use residential.

RESPONSE: The proposed modification to include projects that are one hundred percent residential, and therefore, without a commercial end use, does not comply with the provisions of the EDA's enabling statute contained in N.J.S.A. 34:1B-1 et seq.

COMMENT: The definition for "Brownfields site" at proposed new N.J.A.C. 19:31-3.2(c)1i should be amended to remove the reference to mixed-use residential development to enable additional types of development projects on sites requiring further remediation. Expanding the pool of potential projects types will further encourage the remediation of brownfields.

RESPONSE: The EDA declines to remove the reference to mixed-use residential development in the definition of "Brownfields site" to enable additional types of development, as EDA assistance for non-mixed-use residential development is not authorized under the provisions of the EDA's enabling statute at N.J.S.A. 34:1B-1 et seq.

COMMENT: Proposed new N.J.A.C. 19:31-3.2(c)5 requires that the future use of the brownfield site shall be commercial use or mixed-use. NJBA believes this should be amended to include residential projects to further encourage the remediation of brownfields loan applicants under this program.

RESPONSE: The EDA declines to revise the requirement at proposed new N.J.A.C. 19:31-3.2(c)5 to include residential projects which, without a commercial component, is precluded under the EDA's enabling statute at N.J.S.A. 34:1B-1 et seq.

COMMENT: N.J.A.C. 19:31-3.1(f) is proposed for amendment and stipulates that not more than 20 percent of the loan may be used for soft costs. NJBA does not believe there should be a limit on soft costs as engineering and professional fees associated with development and remediation could be a substantial percentage of project costs, particularly in the case of smaller projects.

RESPONSE: The proposed requirement that not more than 20 percent of the Brownfields loan may be used for soft costs is consistent with existing EDA policy to ensure that the amount of reimbursement for any costs not directly related to construction, including fees and taxes, be limited to a fair and reasonable amount.

Federal Standards Statement

The adopted amendments are not subject to nor exceed any Federal requirements or standards, particularly under 26 U.S.C. § 1400Z-1 and 1400Z-2 as referenced in the proposed amendments.

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

CHAPTER 30

ADMINISTRATIVE RULES

SUBCHAPTER 6. FEES

19:30-6.1 Application fee

(a) Except as set forth in (c) and (d) below, a non-refundable fee of $1,000 shall accompany every application for Authority assistance, except for:

1.-2. (No change.)

3. An application for assistance under the Small Business Fund and N.J.S.A. 34:1B-47 et seq., for which the fee is $300.00;

4. An application for assistance under the Real Estate Impact Fund, for which the fee is $2,500; and the full amount of direct costs of any analysis by a third-party retained by the Authority, if the Authority deems such retention to be necessary, shall be paid; and

5. An application for assistance under the Brownfields Loan Program, for which the fee is $2,500; and the full amount of direct costs of any analysis by a third-party retained by the Authority, if the Authority deems such retention to be necessary, shall be paid by the applicant prior to the Authority's decision on the application.

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

CHAPTER 31. AUTHORITY ASSISTANCE PROGRAMS

SUBCHAPTER 3. DIRECT LOAN PROGRAM

19:31-3.1 Program description

(a) (No change.)

(b) Except as otherwise provided in this subsection, direct loans are available in a maximum amount of $2,000,000 for fixed asset financing and $750,000 for working capital.

1. (No change.)

2. For the Brownfields Redevelopment Loan Program, the maximum loan amount will be $5,000,000 and the minimum shall be $100,000.

3.-8. (No change.)

(c)-(e) (No change.)

(f) Proceeds of Brownfield Redevelopment loans shall be used for financing those remediation costs not duplicative of other approved State or Federal grants previously awarded for the proposed use of funds and associated with the remediation project, including, but not limited to: soil, groundwater, and infrastructure investigation, assessment, and remediation; abatement; hazardous materials or waste disposal; long-term groundwater remediation, natural attenuation, or other forms of engineering and institutional controls; building and structural remedial activities, including, but not limited to, demolition, asbestos abatement, polychlorinated biphenyl removal, contaminated wood or paint removal, or other infrastructure remedial activities; attorney fees; and planning, engineering, and environmental consulting. Not more than 20 percent of the brownfields loan may be used for soft costs.

(g)-(h) (No change.)

(i) The Authority shall determine the term, and fixed and/or variable rates of interest, including interest rate floors, to be charged for each loan product through consideration and official action of the Members at a public hearing. The applicant shall elect in writing, at or prior to the time of closing, a fixed interest rate or a variable interest rate.

1.-6. (No change.)

7. For Brownfields loans, full repayment shall be due and payable to the Authority at the earlier of the end of the loan term or upon closing of construction financing. The interest shall be fixed and shall be determined by the economic feasibility and economics pertaining to the return

on investment and the ability to attract the required investment. The Authority, at its sole discretion, may reduce the rate of interest based on factors associated with the redevelopment project's projected societal benefits and contribution to the economic development of the municipality and the areas to be affected by the redevelopment project as determined by a review of the redevelopment project design; such factors may include, but are not limited to:

i. The redevelopment project has been designed as a mixed-use residential project consisting of newly-constructed residential units where the developer will reserve at least 20 percent, but not more than 50 percent, of the residential units constructed for occupancy by low- and moderate-income households with affordability controls as required under the rules of the Council on Affordable Housing;

ii. The brownfield site is in an urban food desert community and the redevelopment project design includes a food delivery source, which means access to nutritious foods, such as fresh fruits and vegetables, through grocery operators, including, but not limited to, a full-service supermarket or grocery store, or other healthy food retailers of at least 10,000 square feet, including, but not limited to, a prepared food establishment selling primarily nutritious ready-to-serve meals;

iii. The redevelopment project design includes a health care or health services center with a minimum of 10,000 square feet of space devoted to primary health care or health services and is located in a distressed municipality with a Municipal Revitalization Index score of 50 or lower;

iv. The redevelopment project has been designed as a tourism destination project, which means a non-gaming business facility that will be among the most visited privately owned or operated tourism or recreation sites in the State, and which has been determined by the Authority to be located in an area appropriate for development and in need of economic development incentive assistance. A tourism destination project shall include a non-gaming business facility within an established tourism district with a significant impact on the economic viability of that district;

v. The redevelopment project design includes an electric vehicle charging station installation in at least 25 percent of the parking spaces to be located at the redevelopment project;

vi. The applicant demonstrates to the Authority that the parking area to be located at the redevelopment project is capable of conversion to commercial space if there is a decrease in demand for parking; and/or

vii. The redevelopment project has been designed to include an incubator facility or collaborative workspaces.

Recodify existing 7. As 8. (No change in text.)

(j)-(k) (No change.)

19:31-3.2 Eligibility standards

(a)-(b) (No change.)

(c) For brownfields loans:

1. The following words and terms, when used in this subchapter, shall have the following meanings only for purposes of the Brownfields Loan Program, unless the context clearly indicates otherwise:

i. “Brownfields site” means any former or current commercial or industrial site that is currently vacant or underutilized and on which there has been, or there is suspected to have been, a discharge of a contaminant or on which there is a contaminated building or which has been remediated for industrial use, but requires further remediation for mixed-use residential development.

ii. "Contaminated building" means a structure for which abatement or removal of asbestos, polychlorinated biphenyls, contaminated wood or paint, and other infrastructure remedial activities is necessary.

iii. "Contamination" or "contaminant" means any discharged hazardous substance as defined pursuant to section 3 of P.L. 1976, c. 141 (N.J.S.A. 58:10-23.11b), hazardous waste as defined pursuant to section 1 of P.L. 1976, c. 99 (N.J.S.A. 13:1E-38), or pollutant as defined pursuant to section 3 of P.L. 1977, c. 74 (N.J.S.A 58:10A-3).

iv. "Equity" means cash, development fees, costs for remediation and redevelopment project feasibility incurred within the 12 months prior to application, property value less any mortgages or liens, and the portion of the developer's fee that is delayed for a minimum of five years, and any other investment by the developer in the remediation or redevelopment project deemed acceptable by the Authority in its sole discretion but shall not include Federal, State, and local grants or Federal and State tax credits.

v. "Licensed site remediation professional" means an individual who is licensed by the Site Remediation Professional Licensing Board pursuant to section 7 of P.L. 2009, c. 60 (N.J.S.A. 58:10C-7) or the Department of Environmental Protection pursuant to section 12 of P.L. 2009, c. 60 (N.J.S.A. 58:10C-12).

vi. "Local governmental redeveloper" means a municipal government, a municipal parking authority, a redevelopment agency acting on behalf of a municipal government as defined in section 3 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-3), a county improvement authority established pursuant to P.L. 1960, c. 183 (N.J.S.A. 40:37A-44 et seq.), or any subdivision, department, agency, or instrumentality of a county or municipality that is authorized to complete the remediation and redevelopment of a brownfield site.

vii. “Redevelopment project” means the specific construction project or improvement, including lands, buildings, improvements, real and personal property or any interest therein, including lands under water, riparian rights, space rights, and air rights, acquired, owned, leased, developed or redeveloped, constructed, reconstructed, rehabilitated or improved, undertaken by a developer, owner, or tenant, or both, at the brownfield site upon completion of the remediation project.

viii. “Remediation,” “remediate,” or “remedial activities” means all necessary actions to investigate and clean up or respond to any known, suspected, or threatened discharge of contaminants, including, as necessary, the preliminary assessment, site investigation, remedial investigation, and remedial action, as those terms are defined in section 23 of P.L. 1993, c. 139 (N.J.S.A. 58:10B-1), provided, however, that “remediation,” “remediate,” and “remedial activities” shall not include the payment of compensation for damage to, or loss of, natural resources.

ix. “Remediation project” or “project” means the investigation, assessment, and remediation of a brownfield site.

2. Applicants shall include potential purchasers or current owners of a brownfield site, including local governmental redevelopers, and shall not include individuals or entities responsible for, or individuals or entities who have common ownership or control with entities responsible for, any existing environmental contamination at the site or any individuals or entities that have indemnified a responsible party or a party who has common ownership or control with a responsible party. The applicant shall demonstrate to the Authority’s satisfaction through the *[required]* licensed site remediation professional ***[report]*** or, as applicable for a structure, *[other documentation from]* a qualified professional ***other than a licensed site**

remediation professional* that the site is a brownfield site ***or the structure is a contaminated building*;**

3. Demonstrate site control or a path to site control for the brownfield site;

4. The brownfield site, in a remediated condition, shall have an appraised value equal to or greater than 100 percent of all debt financing, including the requested brownfields loan amount, unless the applicant can demonstrate other sources of collateral to the Authority's satisfaction;

5. Future use of the site shall be commercial, including, but not limited to, manufacturing and retail, or mixed use.

6. The applicant shall demonstrate the following to the Authority's satisfaction and based on the Authority's analysis, taking into account the costs of the remediation project:

i. The redevelopment project is economically feasible, meaning there is enough cash flow to repay debt financing, including the brownfields loan; and

ii. The redevelopment project has a funding gap, which shall be supported by a certification from the applicant that after making all good faith efforts to raise additional capital, additional capital cannot be raised from other sources;

7. Applications shall meet a minimum score and may be prioritized or selected in competitive rounds based on criteria that considers factors related to the economic distress of the municipality and the benefits of the proposed redevelopment project to the municipality and the State, including, but not limited to:

i. The applicant is a non-profit entity;

ii. The level of economic distress in the municipality as determined by the brownfield site being located in one of the 50 most distressed municipalities in the Municipal Revitalization Index, in an eligible Opportunity Zone pursuant to 26 U.S.C. § 1400Z-1 and 1400Z-2, or in a municipality serviced by the New Jersey Department of Environmental Protection Community Collaborative Initiative;

iii. Investment received through a fund qualifying under 26 U.S.C. § 1400Z-1 and 1400Z-2, or engagement and collaboration with the Department of Environmental Protection Community Collaborative Initiative;

iv. The Brownfields site is located in Planning Area 1 (Metropolitan) pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.) and within a one-half mile radius, with bicycle and pedestrian connectivity, to the mid-point of a New Jersey Transit Corporation, Port Authority Transit Corporation, or Port Authority Trans-Hudson Corporation rail, bus, or ferry station, including all light rail stations, or a high frequency bus stop as certified by the New Jersey Transit Corporation;

v. The proposed plan for the reuse of the brownfield site is consistent with applicable local redevelopment plans;

vi. The amount of the projected new tax revenues generated from the proposed use of the brownfield site;

vii. The need of the loan to the viability of the remediation project and the redevelopment project;

viii. The public health and environmental benefits of the proposed redevelopment project, in addition to the remediation of the brownfield site; and

ix. The length of time the brownfield site has been abandoned or underutilized;

8. Remediation projects previously approved for reimbursement through the Brownfields and Contaminated Site Remediation Reimbursement Program are not eligible. Remediation projects that have not received any assistance from the Brownfields and Contaminated Site Remediation

Program are eligible for a Brownfields loan provided that the loan is used for separate uses other than the reimbursement assistance.

(d)-(e) (No change.)

19:31-3.3 Application procedures

(a)-(b) (No change.)

(c) A completed Application includes:

1.-6. (No change.)

7. A list of the applicant's five largest suppliers, including the supplier name, address, telephone number, and contact person;

8. A schedule of all officers, directors and stockholders (owning 10 percent or more of the stock), including resumes and signed, dated personal financial statements; and

9. For the Brownfields Loan Program, applications shall be accompanied by:

i. A letter of support from the mayor ***or the governing body if the position of mayor does not exist*** of the municipality in which the brownfield site is located;

ii. In the case of municipalities making application, all approvals required by the Local Finance Board in the Division of Local Government Services, Department of Community Affairs;

iii. A plan for the redevelopment project, specifically including the proposed reuse of the brownfield site and a description of the relation of the reuse plan to applicable local redevelopment plan, zoning, and land use;

iv. A completed ***[environmental]*** report prepared by a licensed site remediation professional pursuant to ***[applicable New Jersey Department of Environmental Protection requirements] the Technical Requirements for Site Remediation at N.J.A.C. 7:26E*; and**

v. Any applicable ***[environmental]*** report prepared by other qualified professionals ***[pertaining to any] that demonstrates to the satisfaction of the Authority that the*** structure on the brownfield site ***is a contaminated building***.

(d)-(e) (No change.)

19:31-3.4 Evaluation process

(a) (No change.)

(b) After completing (a) above, a determination is made as to the merits of the request, the likelihood of repayment, and the adequacy of the collateral available to secure the requested financing. For a Brownfields loan, the determination of the amount of the loan shall also be based on the amount of the funding gap.

(c) (No change.)

19:31-3.5 Approval process

(a)-(c) (No change.)

(d) If there has been no veto, a formal commitment letter is issued to the applicant.

1. The commitment letter contains all terms, conditions and collateral required by the Authority. As applicable, direct loans are subject to the Authority's affirmative action requirements, P.L. 1979, c. 203 (N.J.S.A. 34:1B-5.4) and prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1).

2. With the exception of the New Jersey Growth Fund, the Edison Innovation Angel Growth Fund, the Edison Innovation VC Growth Fund, [and] the Edison Innovation Growth Stars Fund, and the Brownfields Loan Program, usually, life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's guarantee. The life insurance must name the Authority as a collateral assignee.

3. With the exception of the New Jersey Growth Fund, the Edison Innovation Angel Growth Fund, the Edison Innovation VC Growth Fund, the Edison Innovation Growth Stars Fund, and the Brownfields Loan Program, personal guarantees of owners of 10 percent or more of the applicant are usually required, and there may be a requirement for collateral apart from the applicant's collateral to secure the personal guarantees.

4. For the Brownfields Loan Program, applicants are required to:

i. As a condition to closing:

(1) Provide documentation of owner equity equal to a minimum of 10 percent of the appraised value of the brownfield site in a remediated state; and

(2) Demonstrate site control, which includes the ability to perform the remediation and redevelopment projects, grant a lien on the brownfield site as collateral to the Authority if applicable, and record the deed restriction in (d)4iii below.

ii. Upon closing, record a deed restriction that requires that for 10 years after completion of the remediation project, any redevelopment project on the brownfield site shall be consistent with the proposed use and the factors considered to determine eligibility, rate of interest, or other benefits under the Brownfields Loan Program.

iii. Ensure that the Authority's affirmative action and prevailing wage requirements shall apply to the remediation project and the redevelopment project.

iv. Prior to final disbursement, provide evidence that the remediation project is completed. There shall be no requirement for the applicant to complete the redevelopment project.

(e)-(f) (No change.)

REAL ESTATE

NJEDA

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: September 12, 2019

RE: New Jersey Bioscience Center, 661 U.S. Highway 1 South (Building 2)
Ascendia Pharmaceuticals, LLC
Fourth Amendment to the Lease Agreement

Summary
I request that the Members approve the Fourth Amendment to the Lease Agreement with Ascendia Pharmaceuticals, LLC (Ascendia) which will permit Ascendia to expend all of the tenant work allowance (TWA) of $367,393.74 until December 31, 2020.

Background

1. *Initial Lease and Amendments*

The Members and staff, through delegated authority, have authorized the initial lease dated May 24, 2017 and subsequent three (3) amendments reallocating rentable square footage and expending the TWA, as summarized in the following chart:

Lease	Lease Date	Phase 1 RSF (Months 1-24 of the Term - 7/31/19)	Phase 2 Additional RSF (Month 25 through the end of the Term)	Total RSF	Tenant Work Allowance Phase 1 (expend by month 24 of the Term - 7/31/2019)	Tenant Work Allowance Phase 2 (expend by month 35 of the Term - 7/31/2020)	Total Tenant Work Allowance	Approval Type	Approval Date
Initial Lease	5/24/2017	10,541	4,749	**15,290**	$197,085.00	$170,308.74	**$367,393.74**	Board	3/24/2017
1st Amendment	7/25/2017	12,889	2,401	**15,290**	$309,712.92	$57,680.82	**$367,393.74**	Delegated	7/25/2017
2nd Amendment	1/1/2018	13,437	1,853	**15,290**	$309,712.92	$57,680.82	**$367,393.74**	Board	11/14/2017
3rd Amendment	10/1/2018	15,290	0	**15,290**	$309,712.92	$57,680.82	**$367,393.74**	Delegated	10/1/2018

The lease provides that the Authority retains any unexpended TWA not used by the required dates. In addition, the Second Amendment to the Lease permitted Ascendia to have a temporary outside storage unit on site until December 31, 2018. Ascendia removed the storage unit on a timely basis.

2. *Reprogramming the Tenant Work Allowance*

Upon initially occupying the leased premises Ascendia planned to purchase and install a clean room, for approximately $475,000, but has yet to commence the permit and planning process for the installation.

Ascendia had until July 31, 2019, to use the Phase 1 TWA of $309,712.92, and has until July 31, 2020, to use the Phase 2 TWA of $57,680.82. To date, Ascendia has not used any of the TWA and plans to expend all or substantially all of the TWA for the clean room installation.

Ascendia has represented that it will commence the planning and permitting process to install the clean room beginning in the fourth calendar quarter of this year and estimates that the clean room will be completely installed by the third calendar quarter of 2020. Ascendia requests that the Authority amend the lease to permit it to reinstate the Phase 1 TWA that has expired and to extend the Phase 2 TWA scheduled to expire on July 31, 2020, so that all the TWA can be used by December 31, 2020. This extension will accommodate any unanticipated delays in the current tentative schedule for the clean room permitting, planning and installation.

3. *Financial Analysis and Recommendation*

Attached as Exhibit A to this memo is a summary comparison of the present value of the Lease's net income (net rent minus amortization of the TWA and amortized brokerage commission) under the original lease and the proposed Fourth Amendment. The proposed Fourth Amendment's net cash flow includes the revisions to the lease's net income under First through the Third Amendments.

In the summary, the net cash flows of the original lease and the proposed Fourth Amendment are discounted to present value as of August 1, 2020 (lease year 4). Using a 5% adjustment rate, the net income of lease years 1 and 3 are adjusted forward to lease year 4, and the net income of lease years 5 through the end of the term are adjusted back to lease year 4.

The net present value summary shows that, as of August 1, 2020, the proposed Fourth Amendment's net income, when including the entire lease term, has a greater present value than the original lease by approximately $123,746. However, when only considering the cash flow of the lease term from August 1, 2020 to the end of the lease term, the original lease has a greater net present value than the proposed Fourth Amendment by approximately $81,986. Staff believes that a financial recommendation should be based on the lease term's entire net cash flow because the entire net cash flow provides a more accurate financial picture of the Authority's investment and return in Ascendia's leasehold.

Based on the present value comparative analysis of the net cash of the entire lease term of the original lease and proposed Fourth Amendment, and Ascendia's planned clean room investment of approximately $475,000, staff recommends that the Members approve the use of the TWA by Ascendia until December 31, 2020. If any TWA remains unexpended by December 31, 2020, the balance of the funds will be retained by the Authority and will not be available to Ascendia.

Attached as Exhibit B to this memo is the proposed Fourth Amendment which is in substantially final form. The final terms of the Fourth Amendment may be subject to revisions, although the basic terms and conditions will remain consistent with those in the attachment. The final terms of the Fourth Lease Amendment will be subject to the approval of the Chief Executive Officer and the Attorney General's Office.

Recommendation

In summary, I request the Members approve the Fourth Lease Amendment Agreement, as outlined in this memo, on final terms subject to approval by the Chief Executive Officer and the Attorney General's Office.

Tim Sullivan
Chief Executive Officer

att: Exhibits A and B
Prepared by: Juan Burgos

EXHIBIT A: ASCENDIA FOURTH AMENDMENT SUMMARY PRESENT VALUE ANALYSIS

Original Lease Present Value Analysis as of August 1, 2020

	Year	EDA Amortized TWA @ 5%	Annual Rent	Amortized Commission	Net Income	PV of Net Income as of 8/1/2020	PV of Remaining Net Income as of 8/1/2020
Year 1	8/1/2017	($28,287)	$167,557	($30,129)	$109,141	$126,344	$0
Year 2	8/1/2018	($28,287)	$316,403	($30,129)	$257,987	$284,431	$0
Year 3	8/1/2019	($58,701)	$421,698	($30,129)	$332,868	$349,511	$0
Year 4	8/1/2020	($58,701)	$434,389	($30,129)	$345,559	$345,559	$345,559
Year 5	8/1/2021	($58,701)	$447,385	($30,129)	$358,555	$341,481	$341,481
Year 6	8/1/2022	($58,701)	$460,841	($30,129)	$372,010	$337,424	$337,424
Year 7	8/1/2023	($58,701)	$474,602	($30,129)	$385,771	$333,244	$333,244
Year 8	8/1/2024	($58,701)	$488,821	($30,129)	$399,991	$329,074	$329,074
Year 9	8/1/2025	($34,242)	$293,708	($17,575)	$241,891	$189,528	$189,528
	Totals	**($443,021)**	**$3,505,405**	**($258,610)**	**$2,803,773**	**$2,636,596**	**$1,876,309**

Proposed Fourth Amendment Present Value as of August 1, 2020

	Year	EDA Amortized TWA @ 5%	Annual Rent	Amortized Commission	Net Income	PV of Net Income as of 8/1/2020	PV of Remaining Net Income as of 8/1/2020
Year 1	8/1/2017	$0	$185,961	($30,523)	$155,437	$179,938	$0
Year 2	8/1/2018	$0	$371,523	($30,805)	$340,718	$375,642	$0
Year 3	8/1/2019	$0	$421,698	($30,805)	$390,894	$410,438	$0
Year 4	8/1/2020	($69,863)	$434,389	($30,805)	$333,721	$333,721	$333,721
Year 5	8/1/2021	($75,550)	$447,385	($30,805)	$341,031	$324,792	$324,792
Year 6	8/1/2022	($75,550)	$460,841	($30,805)	$354,486	$321,530	$321,530
Year 7	8/1/2023	($75,550)	$474,602	($30,805)	$368,247	$318,106	$318,106
Year 8	8/1/2024	($75,550)	$488,821	($30,805)	$382,467	$314,657	$314,657
Year 9	8/1/2025	($44,071)	$293,708	($17,969)	$231,668	$181,518	$181,518
	Totals	**($416,132)**	**$3,578,928**	**($264,125)**	**$2,898,670**	**$2,760,341**	**$1,794,323**
	4th Amend. minus Original	**$26,889**	**$73,523**	**($5,514)**	**$94,897**	**$123,746**	**($81,986)**

Notes:

Analysis uses 5% discount rate

Lease years 1 through 3 were adjusted to a future value as of 8/1/2020 @ 5%

Lease Years 5 through the end of term were adjusted to a present value as of 8/1/2020 @ 5%

EXHIBIT B

FOURTH AMENDMENT TO THE LEASE AT TECHNOLOGY CENTRE OF NEW JERSEY[1]

This FOURTH AMENDMENT TO THE LEASE (the “FOURTH AMENDMENT”) is made as of the 1st day of [insert month] 2019, by and between Ascendia Pharmaceuticals, LLC, a New Jersey limited liability corporation (“TENANT”) and the New Jersey Economic Development Authority (“LANDLORD”).

WHEREAS, LANDLORD and TENANT entered into a Technology Centre of New Jersey (“TECH CENTRE”) Lease Agreement dated May 24, 2017, (the “ORIGINAL LEASE”) in the premises described therein (the “LEASED PREMISES”) and located in Tech Two (“BUILDING”), at the TECH CENTRE, 661 Route 1 South, North Brunswick, New Jersey;

WHEREAS, the LEASED PREMISES was to consist of 10,541 rentable square feet (“RSF”) for the period between August 1, 2017 (“COMMENCEMENT DATE”) and July 31, 2019 (“PHASE I PREMISES”);

WHEREAS, LANDLORD and TENANT entered into the First Amendment to the Lease at the Technology Centre of New Jersey dated July 25, 2017 (the “FIRST AMENDMENT”), which increased the PHASE I PREMISES from 10,541 RSF feet to 12,889 RSF;

WHEREAS, the TENANT entered into the Second Amendment to the Lease at the Technology Centre of New Jersey dated January 1, 2018 (the “SECOND AMENDMENT”), which increased the PHASE I PREMISES from 12,889 RSF to 13,437 RSF and permitted TENANT to place one (1) 8 feet x 20 feet x 8.5 feet temporary storage unit in the Tech Two loading area until 5 pm on December 31, 2018;

WHEREAS, the TENANT entered into the Third Amendment to the Lease at the Technology Centre of New Jersey dated October 1, 2019 (the “THIRD AMENDMENT”), which increased the PHASE I PREMISES from 13,437 RSF to 15,290 RSF and removed references to the PHASE I PREMISES;

WHEREAS, the ORIGINAL LEASE, FIRST AMENDMENT, the SECOND AMENDMENT, and the THIRD AMENDMENT are collectively referred to as the LEASE;

WHEREAS, the ORIGINAL LEASE, provided a TENANT WORK ALLOWANCE to TENANT for both the PHASE I PREMISES and the PHASE II PREMISES;

WHEREAS, the FIRST AMENDMENT authorized TENANT’s use of the proportionate share of the TENANT WORK ALLOWANCE based on the increased square footage of the PHASE I PREMISES;

WHEREAS, the TENANT WORK ALLOWANCES were to be utilized by the TENANT during specific timeframes of the LEASE TERM;

[1] The Technology Centre of New Jersey has been renamed the New Jersey Bioscience Center.

WHEREAS, the TENANT desires to reinstate the expired PHASE I PREMISES TENANT WORK ALLOWANCE until December 31, 2020 and to extend the expiration date for the use of the PHASE II PREMISES TENANT WORK ALLOWANCE from July 31, 2020 until December 31, 2020 as hereinafter set forth:

NOW, THEREFORE in consideration of the covenants and conditions set forth herein and other good and valuable consideration paid, the sufficiency of which is hereby acknowledged by each of the parties, TENANT and LANDLORD do covenant and agree as follows:

1. All the recital clauses hereinabove set forth are incorporated by reference as though set forth verbatim and at length herein.

2. In Section 9 of the FIRST AMENDMENT, the FIRST AMENDMENT TO EXHIBIT D is deleted and replaced with the attached EXHIBIT D to the FOURTH AMENDMENT.

3. This FOURTH AMENDMENT may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

4. This FOURTH AMENDMENT shall be governed by the laws of the State of New Jersey.

5. Except as expressly modified hereby, all terms, conditions, definitions, undertakings and covenants of the LEASE shall remain in full force and effect and are in no way abrogated by this FOURTH AMENDMENT. Capitalized terms used in the within FOURTH AMENDMENT but not otherwise defined herein shall have the meanings ascribed to them in the LEASE.

6. The parties hereby confirm the validity and continued force and effect of the LEASE.

[INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this FOURTH AMENDMENT to LEASE as of the date first written above.

ATTEST	**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY, LANDLORD**
NAME: TITLE:	Lori Matheus, Senior Vice President, Finance and Development
ATTEST	**ASCENDIA PHARMACEUTICALS, LLC, TENANT**
NAME: TITLE:	Jim J. Huang, Chief Executive Officer

EXHIBIT D TO THE FOURTH AMENDMENT: TENANT WORK ALLOWANCE

1. LANDLORD will provide TENANT with a TENANT WORK ALLOWANCE as follows: During months 1 through 41 of the INITIAL TERM of the LEASE, LANDLORD will provide TENANT $367,393.74 for TENANT WORK in the PREMISES.

2. Prior to commencing TENANT WORK, TENANT will provide a draw schedule for the TENANT WORK for the PREMISES.

3. Based on the TENANT provided draw schedule, LANDLORD will disburse the TENANT WORK ALLOWANCE in accordance with the provisions of Section 15.8 hereof but proportionally as follows: the total draw amount multiplied by the TENANT WORK ALLOWANCE for the particular Phase divided by the TENANT WORK for that Phase, until either the TENANT WORK ALLOWANCE is paid in full or until the TENANT WORK is complete, whichever comes first.

4. LANDLORD will retain any undisbursed TENANT WORK ALLOWANCE.

5. No TENANT WORK ALLOWANCE shall be provided by LANDLORD to TENANT during the EXTENDED TERM, if any.

NJEDA

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

Date: September 12, 2019

Subject: Professional Services Contract via Select Vendor between NJEDA and Langan Engineering and Environmental Services, Inc. State Office Building - Health Building Project, Trenton, NJ

Summary

The Members are asked to approve procurement of the services of Langan Engineering and Environmental Services, Inc, ("Langan") of Parsippany, NJ, via a select vendor procurement for Civil and Environmental Engineering Services associated with the demolition and parking lot improvements component of the Health Building Project ("Project") located in Trenton, NJ.

Background

In February 2017, the Board approved the selection of HDR Architects and Engineers P.C. ("HDR") as the Prime Architectural/Engineering (A/E) firm of record for the Health Building Project in Trenton, New Jersey, through a public Request for Qualifications/Request for Proposals ("RFQ/P") procurement process and NJEDA entered into a Contract with the firm.

As outlined in the Contract Documents, it is HDR's obligation to assemble all necessary and required subconsultants to complete the design and construction of the Health Building Project, including the above-mentioned demolition and parking lot improvements component of the Health Building Project. The demolition and parking lot improvements component of the Health Building Project includes the demolition of the existing Health and Agriculture buildings and the construction of a surface parking lot on the site of these former buildings upon completion of the demolition. Turner Construction Company, the construction manager of record for the Project, will perform the demolition of existing structures, construction of the new surface parking lot and site utility infrastructure work.

Although part of the Base Contract, the demolition and parking lot improvements were a later phase of the Project, and the scope of services for that work was referenced in the RFQ/P but not identified in detail. Therefore, the proposers were not required to list their subconsultant teams for this phase of the work in their qualification and proposal submissions. The subconsultants identified in the proposals were for the design and construction of the new Health Building.

As the Project progressed, NJEDA authorized HDR to proceed with Phase One of the demolition and parking lot improvements component of the Health Building Project. HDR selected Langan as its subconsultant to perform all civil and environmental engineering consulting services associated with the demolition and parking lot improvements component of the Health Building Project. HDR also selected Hunter Research to perform historic architecture and cultural resource services associated with the demolition mitigation plan component of the Health Building Project.

Phase One services included the performance and preparation of an Executive Order 215 Environmental Assessment which was prepared by the HDR Team, including Langan, as part of Base Contract Services and submitted to NJDEP in October 2017. NJDEP has completed its review and approval of the Executive Order 215 Environmental Assessment. Langan performed all civil and environmental engineering consulting services in the preparation of the above-mentioned Executive Order 215 Environmental Assessment.

In addition, as the civil engineer for the Taxation Building Project, which is adjacent to the existing Health and Agriculture Buildings, Langan has unique working knowledge of the site, infrastructure and regulatory agency permit conditions on the adjacent Taxation Building site which will be invaluable to the design and implementation of the Health and Agriculture demolition and parking lot improvements project.

As the project moved into the next Phase of the Civil and Environmental Engineering Services associated with demolition and parking lot improvements component of the Project, it was confirmed that the existing buildings contain hazardous materials. Pursuant to Section 4.4 of the Developer/Architect Agreement between HDR and NJEDA (“Agreement”), HDR informed NJEDA that consulting services associated with remediation/abatement of hazardous materials is beyond HDR’s scope of Basic Services. Section 4.4 of the Agreement further provides that: “The [EDA] shall, upon review, furnish the services of environmental engineers of its own choosing when such services are reasonably required by the scope of the Project and are recommended by the Architect and are beyond the scope of the Architect’s Basic Services. Such services may include, but are not limited to, evaluations of hazardous materials and remediation.” HDR has also informed NJEDA that they do not typically provide the required environmental remediation consulting services and, furthermore, their liability insurance does not provide coverage for these services (reference HDR letter dated August 8, 2019 attached as Exhibit A).

Based on the foregoing, the retention of Langan by the NJEDA for the next phase of the associated environmental services is logical from the perspective of timing, efficiency and cost.

If NJEDA were to contract directly with Langan, it will become the civil and environmental engineering firm of record and will be directly responsible to NJEDA for project related civil and environmental services related to the demolition of the existing Health and Agriculture buildings and the construction of the surface parking lot improvements.

To initiate the process of procuring this next Phase of the Civil and Environmental Engineering Services associated with demolition and parking lot improvements component of the Project, the Real Estate Division has obtained a cost proposal from Langan (attached as Exhibit B) in the amount of $642,153 which has been reviewed and found to be reasonable and satisfactory. The Board Approved Budget includes a line item for Demolition Engineering in the amount of $810,000 (which includes a 10% contingency). The Langan Contract will be designed as a Maximum Not-To-Exceed contract in the amount of $642,153 with a 15% contingency for a total of $738,500. Accordingly, there is sufficient funding available in the Board Approved Budget to cover this cost. In addition, the Board Approved Budget also contains a Project Contingency which may be utilized for Demolition Engineering should the need arise. Attached as Exhibit C is a proposed form of Professional Services Contract.

NJEDA's procurement policy allows NJEDA to contract for consultant services on a select vendor basis provided that such procurement is deemed in the best interest of NJEDA. This procurement process permits NJEDA to seek a proposal from a selected consultant rather than a public procurement.

Staff requests the retention of Langan as a select vendor for the following reasons:

- Contract and Project Consistency - Langan is a subconsultant of HDR working on this aspect/component of the Project. Langan has satisfactorily performed Phase One services associated with this aspect/component of the Project and has in-depth knowledge of the Project site and regulatory agency permit conditions as part of their involvement in the Taxation Building project and adjacent site.

- Timing - Langan's in-depth knowledge of the EO 215 and project site negates any start-up, orientation time required for information research, review and assemblage of documents/reports, pre-site visits and inspections, etc.

- Cost Savings - Langan has successfully and thoroughly completed the environmental research as part of Phase One services, has unique working knowledge of the existing site, infrastructure and regulatory agency permit conditions on the adjacent Taxation Building site all of which will serve as valuable to the design and implementation of the demolition and parking lot improvements project, and should result in cost savings to the Project. In addition, through a direct contract between Langan and NJEDA, HDR will not impose its overhead fee to monitor Langan's services.

Recommendation

In summary, approval is requested to enter into a contract with Langan Engineering and Environmental Services, Inc. in the amount of $642,153 plus a 15% contingency for a total of $738,500 via a select vendor procurement for Civil and Environmental Engineering Services associated with demolition and parking lot improvements component of the Health Building Project located in Trenton, NJ.

Tim Sullivan
Chief Executive Officer

Att.: Exhibit A, Exhibit B, Exhibit C
Prepared by: Thomas P. Catapano

EXHIBIT A

August 8, 2019

Mr. Thomas Catapano
Design & Construction Manager – Community Development Real Estate Division
New Jersey Economic Development Authority
36 West State Street
Trenton, NJ 08625-0990

Subject: Demolition of Existing Health and Agriculture Buildings
Trenton, New Jersey

Dear Tom,

Several months ago, NJEDA authorized HDR Architects & Engineers, P.C. (HDR) and its subconsultants, Langan Engineering and Hunter Research, to proceed into Phase 2 of the demolition component of the Health Building Project. While assembling information related to this matter, it has come to HDR's attention that the existing Health and Agriculture Buildings have not been remediated / abated of asbestos, universal wastes and/or other hazardous materials which require associated environmental consulting services.

Pursuant to the Developer/Architect Agreement between NJEDA and HDR Architects and Engineers, P.C., Section 4.4, HDR informed NJEDA that environmental consulting services associated with remediation/abatement of hazardous materials is beyond HDR's scope of Basic Services. Section 4.4 of the agreement states: "The Developer shall, upon review, furnish the services of environmental engineers of its own choosing when such services are reasonably required by the scope of the Project and are recommended by the Architect and are beyond the scope of the Architect's Basic Services. Such services may include, but are not limited to, evaluations of hazardous materials and remediation."

In addition, we reviewed this situation with our Corporate Legal Department and they have advised us that this type of project with these existing environmental issues is not the type of project that HDR Architects and Engineers, P.C.'s liability insurance policy provides coverage for. Per general company policy, HDR Architects and Engineers, P.C. does not as a part of our normal A/E services perform environmental remediation consulting.

In accordance with Section 4.4 of the Developer/Architect Agreement we therefore respectfully request that the above-mentioned Phase 2 demolition engineering services, including environmental consulting services associated with the remediation/abatement of hazardous materials, be provided by Langan Engineering (HDR's subconsultant) and be transferred under direct contract to NJEDA, so that the continuity of the design and demolition services can remain unchanged.

1000 Lenox Drive, Lawrenceville, NJ 08648-2312
(609) 844-1212

Sincerely,

Mark J. Samse, ASLA, PP
Vice President, Project Principal

Eric T. Jaffe, AIA, NCARB
Vice President, Managing Director
HDR Architects & Engineers, P.C.

cc: S. Cuddahy (HDR)

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EXHIBIT C

CONTRACT FOR PROFESSIONAL SERVICES
CIVIL AND ENVIRONMENTAL ENGINEERING
CONSULTING SERVICES
STATE OFFICE BUILDING – HEALTH BUILDING PROJECT
DEMOLITION AND NEW PARKING LOT

AGREEMENT made this ____ day of _______, 2019, by and between the NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY (the "Authority or NJEDA"), having its address at 36 West State Street, P.O. Box 990, Trenton, New Jersey 08625-0990, and Langan Engineering & Environmental Services, Inc. ("Langan"), having its address at 300 Kimball Drive, Parsippany, New Jersey 07054.

The Authority and Langan agree as follows:

1. **The Work.** Langan shall perform or shall provide the services as specifically detailed in Langan's Proposal No. 100646004, dated May 6, 2019, (the "Proposal") as requested by the Authority and attached hereto as Exhibit C and made a part of this Contract.

2. **Time.** Langan shall commence Work presented in the Proposal immediately upon issuance of the Notice To Proceed, and through subsequent phases/tasks of Work as requested or directed by the Authority.

Langan shall render the services described in Langan's Proposal in accordance with the time line contained in an email from NJEDA to Sony David, PE, LEED AP, Associate, of Langan dated March 27, 2019, and attached hereto as Exhibit D, such that all construction documents associated with the abatement and demolition of the buildings and parking lot improvements are completed and submitted to all regulatory agencies that are issuing permits/approvals on or about March 1, 2020.

Notwithstanding the termination of this agreement, the Authority reserves the right it its sole discretion to extend this agreement on a month to month basis beyond termination until a replacement contract for Civil and Environmental Engineering Consulting Services is entered into by the Authority.

3. **Contract Price.**

The Authority shall pay Langan for the performance of the Work on a time and expense basis as per the Fee Schedule set forth in Langan's Proposal. Expenses not specifically identified in the Fee Schedule shall be billed as is reasonable and customary. The total Contract Price shall not exceed Six Hundred Forty Two Thousand, One Hundred and Fifty Three Dollars

($642,153.00), unless an increase is approved in writing by the Authority. The Authority may require services in addition to those agreed to in the Proposal. Compensation to Langan for additional services shall be either an agreed maximum not-to-exceed, lump sum fee, or time and materials fee in accordance with the Fee Schedule set forth in Langan's Proposal; or if not specified in Langan's Proposal, then reasonable and customary amounts as negotiated by the Authority.

4. **Ownership and Use of Documents.** All reports, surveys, drawings and other information produced or generated by Langan pursuant to this Contract shall become the sole property of the Authority and may be used in its entirety or in part at the sole discretion of the Authority without additional compensation to or approval from Langan. Whenever such information is used, credit shall be given as to the author/source of the information.

5. **Manner of Payment.** Langan shall submit a monthly invoice package to the Authority via REDInvoices@njeda.com. The invoice package shall consist of substantiating documentation which includes weekly time sheets from Langan's employees, original invoices for direct disbursement, or any documentation or information requested by the Authority. The invoice package must also include a Monthly Status Report. Invoices will not be processed unless accompanied by the Monthly Status Report.

Langan shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

6. **Indemnification.** Langan shall defend, indemnify, protect and hold harmless the Authority and the State of New Jersey, and their officers, agents, servants and employees from and against any and all third-party suits, claims, demands, losses or damages of any kind arising out of or claimed to arise out of any negligent or willful act, error, or omission on the part of Langan, its officers, agents, servants, employees and subcontractors in the performance of services under this Contract. Langan shall, at its own expense, appear, defend and pay all charges for attorneys and all costs and other expenses arising from such suit or claim or incurred in connection therewith. If any judgment shall be rendered against the Authority and/or State of New Jersey or their officers, agents, servants, and employees for which indemnification is provided under this Section 6, Langan shall, at its own expense, satisfy and discharge the same. For the avoidance of doubt, Langan shall have no indemnification obligation for any claims arising solely from the negligent or willful acts, errors or omissions of the EDA, its officers, employees, or agents.

Langan shall be liable to the Authority and/or State of New Jersey for any reasonable costs incurred by the Authority and/or State of New Jersey to correct, modify, or redesign any technical information, reports, findings, analyses, surveys or drawings generated or produced by Langan or any Work performed by Langan that is found to be defective or not in accordance with the provisions of the Contract as a result of any negligent act, error, or omission on the part of Langan, its officers, agents, servants, employees and subcontractors. Langan shall be given a reasonable opportunity to correct any deficiency.

The indemnification obligation set forth in Section 6 is not limited in any way by the insurance coverage required pursuant to Section 7 of this Contract and shall survive the terms of this contract.

7. **Insurance.** Langan shall procure and maintain, at its own expense, liability insurance for damages of the kinds and in the amounts hereinafter provided, from insurance companies licensed, admitted and approved to do business in the State of New Jersey. Langan shall obtain this coverage from A VII or better rated companies as determined by A.M. Best Company. All liability insurance policies shall afford coverage on an occurrence rather than claims made basis with the exception of the professional liability coverage. The types and minimum amounts of insurance required are as follows:

(a) Commercial General Liability Insurance.

The minimum limits of liability for this insurance shall be $1,000,000 per occurrence and $2,000,000 in the aggregate and cover liability based on property damage, death and bodily injury.

The Commercial General Liability Insurance policy shall name the NJEDA and the State of New Jersey as additional insureds. The coverage to be provided under this policy shall be as broad as Standard ISO policy form CG 00 01 shall include contractual liability coverage pursuant to Standard ISO policy form CG 00 01.

(b) Workers' Compensation and Employers' Liability.

Workers' Compensation Insurance shall be provided in accordance with the requirements of the laws of this State and shall include an endorsement to extend coverage to any State which may be interpreted to have legal jurisdiction. Employers' Liability Insurance shall also be provided in an amount not less than $100,000 Each Accident / $500,000 Disease Policy Limit / $100,000 Disease Each Employee.

(c) Professional Liability Insurance.

Langan shall carry Errors and Omissions and/or Professional Liability Insurance sufficient to protect Langan from any liability arising out of professional obligations performed pursuant to this Contract. The insurance shall be in the amount of $1,000,000 for each claim and annual aggregate to this subsection (c) and the deductible and/or retention shall be no more than $50,000.00 and the amount of deductible and/or retention shall be indicated on the Certificate of Insurance. Such policy form shall be approved by the NJEDA.

(d) Automobile Liability and, if necessary, Excess Liability insurance with a limit of not less than one million dollars ($1,000,000) each accident. Such insurance shall cover liability arising out of any auto, including owned vehicles, hired vehicles and non-owned vehicles. The NJEDA shall be included as an insured under the successful firm's Automobile Liability policy using ISO Form CA 00 01, (or a substitute form providing similar coverage), and under the Excess Liability policy, if any.

ACORD Certificates of Insurance acceptable to the NJEDA in respect to each of the aforementioned policies shall be filed with the NJEDA prior to commencement of Work. These Certificates shall name the NJEDA and the State of New Jersey as additional insureds as outlined above. All policies and corresponding certificates (or copy of policy endorsements) must show thirty (30) days prior written notice of cancellation (10 days notice for non-payment cancellation) to NJEDA. If such notification is not available from the insurers directly to NJEDA, Langan agrees to provide notification to NJEDA within 48 hours of receipt.

8. **Termination.** The Authority shall have the right without cause and in its complete discretion to terminate the Contract at any time upon seven (7) days' advance written notice to Langan. In such event, absent a default on the part of Langan, Langan shall be entitled to compensation for all services properly provided to the Authority pursuant to the Contract prior to such termination.

In addition to other remedies available under law to the non-defaulting party, this Contract may be terminated by either party upon seven (7) days' advance written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.

9. **Confidential Information of the Authority.** In connection with performing the Work, Langan, its employees and subcontractors may receive, review and become aware of proprietary,

personnel, commercial, marketing and financial information of the Authority and/or State of New Jersey, its employees, members, borrowers or business associates that is confidential and/or proprietary in nature ("Confidential Information"). Langan agrees that the use and handling of Confidential Information by Langan, its employees and subcontractors, shall be done in a responsible manner and solely for furtherance of the Work. Other than to its employees and subcontractors who have a need to know Confidential Information in connection with performance of the Work, Langan agrees not to disclose any Confidential Information, without the prior written consent of the Authority and/or the State of new Jersey. Langan shall be responsible to assure that its employees and subcontractors do not disclose any Confidential Information without the prior written consent of the Authority and/or State of New Jersey. Langan shall inform each of its employees and subcontractors that receives any Confidential Information of the requirements of this Section 9 of the Contract and shall require each such employees and subcontractors to comply with such requirements.

Notwithstanding the foregoing, the term Confidential Information shall not include information which: (i) is already known to Langan, its employees and subcontractors from sources other than the Authority; (ii) is or becomes generally available to the public other than as a result of a disclosure by Langan or its employees; or (iii) is required to be disclosed by law or by regulatory or judicial process.

Pursuant to *Section 6 <u>Indemnification</u>* of the Contract, Langan shall indemnify and hold the Authority and State of New Jersey, their employees and members harmless for any breach of this *Section* 9 "Confidential Information of the Authority", by Langan or its employees.

10. **<u>Debarment Liability.</u>**

Langan acknowledges that it shall be rendered liable to debarment in the public interest, pursuant to procedures established by Executive Order No. 34 (1976), and updated by Executive Order No. 189 (1988), and pursuant to N.J.A.C. 19:30-2, for violating any of the following provisions:

a. No Langan employee, officer or agent shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any Authority officer or employee or special Authority officer or employee, as defined by N.J.S.A. 52:13D-13(b) and (e), with which such Langan transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13(i), of any such officer or employee, or any partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13(g).

b. The solicitation of any fee, commission, compensation, gift, gratuity, or other thing of value by any Authority officer or employee or special Authority officer or employee from any Langan employee, officer, or agent, shall be reported in writing forthwith by Langan to the Attorney General of New Jersey and the Executive Commission on Ethical Standards.

c. No Langan employee, officer or agent, may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such Langan to, any Authority officer or employee or special Authority officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to the Authority, or with any person, firm or entity with which he or she is employed or associated or in which he or she has an interest within the meaning of N.J.S.A. 52:13D-13(g). Any relationships subject to this subsection shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the Authority officer or employee or special Authority officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

d. No Langan employee, officer or agent shall influence, or attempt to influence or cause to be influenced, any Authority officer or employee or special Authority officer or employee in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.

e. No Langan employee, officer or agent shall cause or influence, or attempt to cause or influence, any Authority officer or employee or special Authority officer or employee to use, or attempt to use, his or her official position to secure unwarranted privileges or advantages for Langan or any other person.

11. **Time for Completion and Damages.** The time for beginning and the time for completion of the Work are essential conditions of the Contract, and the Work embraced shall be commenced on the date specified in the Notice to Proceed.

Langan shall proceed with the Work at such rate of progress to insure full completion within the Contract time. It is expressly understood and agreed by and between Langan and the Authority that the Contract time for the completion of the Work described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the Work.

For reasons within Langan's control, if Langan shall fail to complete the Work, or shall be responsible for a delay which results in the failure to complete the Work within the Contract time, or extension of time granted by the Authority, then Langan will pay the Authority an amount sufficient to compensate the Authority for its damages incurred as a result of such failure to complete.

12. **Contractual Liability Act.** Notwithstanding any provision in this Contract or in the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., to the contrary, the parties hereto agree that any and all claims made by Langan against the State of New Jersey and/or the Authority for damages, including, but not limited to costs and expenses, shall be governed by and subject to the provisions of the New Jersey Contractual Liability Act.

13. **Political Campaign Contributions.**

13.1 For the purpose of this Section 13, the following shall be defined as follows:

a) "Contribution" means a contribution reportable as a recipient under "The New Jersey Campaign Contributions and Expenditures Reporting Act" P.L. 1973, c. 83 (C.10:44A-1 et seq.), and implementing regulations set forth at N.J.A.C. 19:25-7 and N.J.A.C. 19:25-10.1 et seq., a contribution made to a legislative leadership committee, a contribution made to a municipal political party committee or a contribution made to a candidate committee or election fund of any candidate for or holder of the office of Lieutenant Governor. Currently, contributions in excess of $300 during a reporting period are deemed "reportable" under these laws.

b) "Business Entity" means:

i. a for-profit entity as follows:

A. in the case of a corporation: the corporation, any officer of the corporation, and any person or business entity that owns or controls 10% or more of the stock of the corporation;

B. in the case of a general partnership: the partnership and any partner;

C. in the case of a limited partnership: the limited partnership and any partner;

D. in the case of a professional corporation: the professional corporation any shareholder or officer;

E. in the case of a limited liability company: the limited liability company and any member;

F. in the case of a limited liability partnership: the limited liability partnership and any partner;

G. in the case of a sole proprietorship: the proprietor; and

H. in the case of any other form of entity organized under the laws of this State or other state or foreign jurisdiction: the entity and any principal, officer, or partner thereof;

ii. any subsidiary directly or indirectly controlled by the business entity;

iii. any political organization organized under section 527 of the Internal Revenue Code is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and

iv. with respect to an individual who is included within the definition of business entity the individual's spouse or civil union partner, and any child residing with the individual, provided, however, that, this Order shall not apply to a contribution made by such spouse, civil union partner, or child to a candidate for whom the contributor is entitled to vote or to a political party committee within whose jurisdiction the contributor resides unless such contribution is in violation of section 9 of P.L. 2005, c. 51 (C.19:44A-20.1 et seq.) ("Chapter 51").

c) PL 2005, c.51 – means Public Law 2005, chapter 51 (C. 19:44A-20.13 through C. 19:44A-20.25, inclusive) as expanded by Executive Order 117 (Gov. Corzine, September 24, 2008).

13.2 The terms, restrictions, requirements and prohibitions set forth in P.L. 2005, c. 51 are incorporated into this Agreement by reference as material terms of this Agreement with the same force and effect as if P.L. 2005, c. 51 were stated herein its entirety. Compliance with P.L. 2005, c. 51 by Langan shall be a material term of this Agreement.

13.3 Langan hereby certifies to the Authority that commencing on and after October 15, 2004, Langan (and each of its principals, subsidiaries and political organizations included within the definition of Business Entity) has not solicited or made any Contribution of money, pledge of Contribution, including in-kind Contributions, that would bar a contract agreement between Langan and the Authority pursuant to P.L. 2005, c. 51. Langan hereby further certifies to the Authority that any and all certifications and disclosures delivered to the Authority by Langan (and each of its principals, subsidiaries and political organizations included within the definition of

Business Entity) are accurate, complete and reliable. The certifications made herein are intended to and shall be a material term of this Agreement and if the Treasurer of the State of New Jersey determines that any Contribution has been made in violation of P.L. 2005, c. 51, the Authority shall have the right to declare this Agreement to be in default.

13.4 Langan hereby covenants that Langan (and each of its principals, subsidiaries and political organizations included within the definition of Business Entity) shall not knowingly solicit or make any contributions of money, or pledge of a contribution, including in-kind contributions, to a candidate committee or election fund of any candidate or holder of the public office of Governor of New Jersey or to any New Jersey state or county political party committee prior to the expiration or earlier termination of this Agreement. The provisions of this Paragraph 13.4 are intended to and shall be a material term of this Agreement and if the Treasurer of the State of New Jersey determines that any Contribution has been made by (and each of its principals, subsidiaries and political organizations included within the definition of Business Entity) in violation of P.L. 2005, c. 51, the Authority shall have the right to declare this Agreement to be in default.

13.5 In addition to any other Event of Default specified in the Contract Documents, the Authority shall have the right to declare an event of default under this Agreement if: (i) Langan (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) makes or solicits a Contribution in violation of P.L. 2005, c. 51, (ii) Langan (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) knowingly conceals or misrepresents a Contribution given or received; (iii) Langan (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) makes or solicits Contributions through intermediaries for the purpose of concealing or misrepresenting the source of the Contribution; (iv) Langan (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) makes or solicits any Contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or to any State or county party committee; (v) Langan (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) engages or employs a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any Contribution, which if made or solicited by Langan (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) directly would violate the restrictions of P.L. 2005, c. 51; (vi) Langan (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) funds Contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) Langan (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) engages in any exchange of Contributions to circumvent the intent of P.L. 2005, c. 51; (viii) Langan (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) directly or indirectly through or by any other person or means, does any act which would violate the restrictions of P.L. 2005, c. 51; or (ix) any material misrepresentation exists in any Political Campaign Contribution Certification and Disclosure which was delivered by Langan to the Authority in connection with this Agreement.

13.6 Langan hereby acknowledges and agrees that pursuant to P.L. 2005, c. 51, Langan shall have a continuing obligation to report to the Office of the State Treasurer, Political Campaign Contribution Review Unit of any Contributions it makes during the term of this Agreement. If after the effective date of this Agreement and before the entire Contract Price is paid by the Authority, any Contribution is made by Langan and the Treasurer of the State of New Jersey determines such Contribution to be a conflict of interest in violation of P.L. 2005, c. 51, the Authority shall have the right to declare this Agreement to be in default.

14. **Diane B. Allen Act.**

Contractors are advised that pursuant to the Diane B. Allen Equal Pay Act, L. 2018, c. 9, any State Contractor providing services within the meaning of that Act is required to file the report required therein, with the New Jersey Department of Labor and Workforce Development. Information about the Act and the reporting requirement is available at: https://nj.gov/labor/equalpay/equalpay.html. Construction projects that are subject to the Prevailing Wage Act are affected by this statute (falling within the definition of "public work"). Additionally, any contract that the Authority enters into for services imposes reporting requirements by awarded bidders and contactors (falling within the definition of "qualifying services"). Information on the reporting requirement for such "qualifying services" is also available at: https://nj.gov/labor/equalpay/equalpay.html. **Goods/Products contracts are not impacted by the statute.**

15. If applicable, the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-5a et seq. will be made a part of this Contract. Langan's signature on this Contract is their guarantee that they

nor any subcontractors they might employ to perform the work covered by this Contract are listed or are recorded in the Office of the Commissioner of the Department of Labor as one who has failed to pay prevailing wages in accordance with the provisions of this Act. Langan certifies that it is not listed on the State of New Jersey, Department of Labor and Workforce Development, Division of Wage and Hour Compliance, Prevailing Wage Debarment List or on the State of New Jersey, Department of Treasury, Consolidated Debarment Report.

16. **General Conditions.**

A. The Work shall be performed in a professional manner, in accordance with the standards generally expected or required within the profession and the Work shall also be performed in accordance with all applicable state, federal and local laws, rules, regulations and ordinances.

B. Langan shall provide such reports, certificates, and documents as the Authority may reasonably require.

C. Langan shall provide to the Authority, at Langan's expense, copies of all drawings, plans, cost estimates, design analyses, reports, and/or other documents required for the Project.

D. If the Authority or Langan observes or otherwise becomes aware of any fault or defect in the Project or nonconformance with any of the Contract Documents, prompt written notice thereof shall be given by the party discovering the defect to the other.

E. The Authority shall furnish all information available to the Authority, and reasonably required for the performance of the Work and shall render approvals and decisions as expeditiously as possible for the orderly progress of Langan's services and of the Work.

F. Langan shall comply with the affirmative action requirements set forth in the Law Against Discrimination, N.J.S.A. 10:5-31 et seq., and the regulations promulgated thereunder by the State Department of Treasury.

G. Langan is required to comply with the requirements of N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27, which are expressly included within the terms of this Contract, see Exhibit A annexed hereto and made a part hereof.

H. In accordance with Public Law 2004, Chapter 57, a subcontractor shall provide a copy of its business registration to any Langan employee, officer or agent, who shall forward it to the NJEDA. No contract with a subconsultant shall be entered into by any Langan employee, officer or agent, unless the subconsultant first provides proof of valid business registrations. Langan shall provide written notice to all subconsultants that they are required to submit a copy of their business registration to Langan. Langan shall maintain a list of the names of any subconsultants and their current addresses, updated as necessary during the course of the contract performance. Langan shall submit to the NJEDA a copy of the list of subconsultants, updated as necessary during the course of performance of the contract. Langan shall submit a complete and accurate list of the subconsultants to the NJEDA before a request for final payment is made to the NJEDA. Langan and any subconsultant providing goods or performing services under this contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the "Sales and Use Tax Act", P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) on all their sales of tangible personal property delivered into the State, refer to Exhibit B.

I. In accordance with the requirements of N.J.S.A. 52:32-17 et seq., N.J.A.C. 12A:10-1.2 et seq., N.J.A.C. 17:13-1.2 et seq., and N.J.A.C. 17:14-1.2 and N.J.A.C. 17:14-4.1 et seq., as amended, the Authority is required to develop a set-aside plan for Small and Disabled Veteran-owned Businesses. Langan agrees that, if awarded a contract based on this plan, it shall comply with all requirements of these provisions. If Langan fails to comply with the requirements of these provisions, the Authority may declare this Contract void.

J. Pursuant to N.J.S.A. 52:34-13.2, all Work and all subcontractor services performed in connection with or as part of the Work shall be performed within the United States.

K. Langan shall not disclose to any third party the contents of the information, reports, findings, analysis, surveys and drawings generated or produced in performance of this Contract, or provide copies of same, without the prior written consent of the Authority, except where such information, reports, etc. are legally required by order of court or administrative agency, state or federal.

L. The Authority and Langan, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party of this Contract and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Contract. Neither the Authority nor Langan shall assign, sublet, or transfer any interest in this Contract without the prior written consent of the other party.

M. Any notices required to be given under this Contract shall be mailed to:

New Jersey Economic Development Authority
P.O. Box 990

Trenton, New Jersey 08625-0990
Attn: Donna T. Sullivan, Vice President, Real Estate Division

And

Langan Engineering and Environmental Services, Inc.
300 Kimball Drive
Parsippany, New Jersey 07054
Attn: Sony David, PE, LEED AP, Associate

N. To the extent that there is any conflict between the terms and conditions of Langan's Proposal and the terms and conditions of the Contract, the Contract shall control.

O. This Contract shall be construed under the laws of the State of New Jersey.

P. The headings of the various paragraphs of this Contract are inserted for the convenience of reference only, and in no way define, describe, or limit the scope or intent of this Contract or any of the provisions hereof, and shall not affect the interpretation of this Contract or any of the provisions hereof.

Q. This Contract shall be construed without any presumptions against the drafter and shall be considered as though it were drafted cooperatively by both parties.

R. In the event that any portion of this Contract is found to be contrary to law and unenforceable; the validity of remaining covenants, agreements, terms and provisions contained in this Contract, shall be in no way affected, prejudiced or disturbed thereby.

S. This Contract constitutes the entire agreement between the parties. Any changes or amendments to the Contract must be in writing and signed by Langan and an authorized representative of the Authority.

T. The parties hereto represent that they have the proper authority to sign on behalf of the entities entering this Contract and they fully intend for the Authority and Langan to be legally bound.

U. Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the Parties. In the event that Langan contracts with third parties to perform any of the services to be performed hereunder, such third parties shall at all times remain an “independent contractor” with respect to the provision of such services. The Authority shall be exempt from payment of all

Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers' Compensation Insurance, with respect to such third-party contracts.

V. This Contract is subject to N.J.A.C. 17:44-2.2. Accordingly, the contract partner(s) shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request. Furthermore, relevant records of private vendors or other persons entering into contracts with covered entities are subject to audit or review by the Office of the State Comptroller pursuant to N.J.S.A. 52:15C-14(d).

W. Langan shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

X. The Owner reserves the right to audit the records of Langan in connection with all matters related to this Agreement. The Langan agrees to maintain records in accordance with generally accepted accounting principles, for period of not less than five (5) years after receipt of final payment.

Y. This Contract is subject to the New Jersey Prompt Payment Acts, N.J.S.A. 52:32-32 et seq. and N.J.S.A. 2A:30A-1 et seq. N.J.S.A. 52:32-32 et seq. requires state agencies to pay for goods and services within sixty (60) days of the agency's receipt of a properly executed State Invoice or within sixty (60) days of receipt and acceptance of goods and services, whichever is later. Properly executed performance security, when required, must be received by the State prior to processing any payments for goods and services accepted by state agencies. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest shall not be paid until it exceeds $5.00 per properly executed invoice. Cash discounts and other payment terms included as part of the original agreement are not affected by the Prompt Payment Act. N.J.S.A. 2A:30A-1 et seq. requires timely payment to prime contractors and subcontractors for contracts to improve real property.

Z. Pursuant to N.J.S.A. 54:49-19, and notwithstanding the provision of another law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of state government, is entitled to payment for those good or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any state tax, the Director of the Division of Taxation shall seek to set off so much of that payment as shall be necessary to satisfy the indebtedness. The amount set-off shall not allow for the deduction of any expense or other deduction which might be attributable to the taxpayer partner or shareholder subjection of set-off under this Act. The Director of the Division of Taxation shall give notice of the set-off to the taxpayer, partner or shareholder and provide an opportunity for a hearing within (30) days of such notice under the procedures for protests established under N.J.S.A. 54:49-19. No request for conference, protest or subsequent appeal to the Tax Court from any protest shall stay the collection of the indebtedness

The Contract entered into as of the day and year first written above.

ATTEST:

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

____
Donna T. Sullivan
Vice President, Real Estate Division

By:________________________________

ATTEST:

LANGAN ENGINEERING AND ENVIRONMENTAL SERVICES, INC.

____

By:______________________________

Exhibits to be added once Contract is converted to pdf – after DAG review and final form

Exhibit A
Exhibit B
Exhibit C – Proposal
Exhibit D – Email to/from Langan

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

RE: Higher Education Public Private Partnership Program
New Jersey City University - West Campus Blocks 2 and 3
(Claremont Construction Group, Inc.)
Third Amendment to the Application

DATE: September 12, 2019

Summary

The Members are asked to approve New Jersey City University's ("Applicant") third amendment to the application to extend the construction schedule of Claremont Construction Group, Inc.'s ("Claremont") phase 2 project from September 9, 2020 until June 30, 2021, due to an additional time the requirement imposed by the project's construction and permanent lender. An amendment to the application is required because the Higher Education Private Public Partnership Program established by P.L. 2009 c. 90 (the "Act") in effect at the time of approval required that the application include "a timetable for completion of the project extending no more than five years after consideration and approval." N.J.S.A. 18A:64-85f(2)(a). The Act also provided that the Authority retained "the right to revoke approval if it determines that the project has deviated from the plan submitted." N.J.S.A.18A:64-85f(3). Staff has reviewed the facts supporting the Applicant's request and finds that facts supporting the delay in commencing the phase 2 project are reasonable and that the lender's request to extend the project completion schedule until June 30, 2021, was unforeseeable.

Background

A. Members' Prior Approvals

To date, the Members have approved the following:

- In September 2015 the Members approved an application for Claremont's 2 phase mixed use development on the West Campus, that would include 330 market rate apartments, 21,250 square foot of commercial space, 243 structured parking spaces, and an estimated development cost of ±$96.83 million. For further reference, a copy of the September 2015 board memo is attached as **Exhibit A**.

- In July 2016, the Members approved the first amendment to the application which permitted the substitution of Jersey City ("City") providing 1 infrastructure redevelopment area bond of approximately $16 million ("RAB") in lieu of 4 redevelopment area bonds (also for approximately $16 million) for Claremont's 2 phase mixed use project, and another of the Applicant's public private partnership on the West Campus with KKF University Enterprises LLC for the development of a 2 phase mixed use project. The City's infrastructure bond financing was to pay the Applicant for past and future public infrastructure improvements to the West Campus including items related to the Claremont and KKF projects.

- In February 2019, the Members approved the second amendment to the application which increased Claremont's phase 2 project units from 167 to 199, revised the phase 2 project's unit mix (deleted 3 bedrooms, reduced 2 bedrooms and increased studios and 1 bedrooms), decreased the retail square footage from 11,472 to 9,957, and increased the total project budget from $96.83 million to $108.13 million.

B. Requested Revision to the Phase 2 Project Schedule

The 2015 initial application include a compliant project schedule, i.e., "a timetable for completion of the project extending no more than five years after consideration and approval." N.J.S.A. 18A:64-85f(2)(a). The following chart summarizes the initial schedule for Claremont's construction phases:

Phase	**Commence Construction**	**Complete Construction**	**Total Months**
Phase 1	March 2016	April 2017	14 months
Phase 2	August 2017	August 2018	14 months

The initial timeline projected that Claremont's 2 phases would be completed by August 2018, which would have been within 5 years of the Members' September 2015 initial approval.

However, a time delay then resulted from the above change from 4 RABs to 1 RAB for approximately $16 million. After the Members' approved the amended project financing in July 2016, Claremont commenced construction on phase 1 in October 2016 and completed phase 1 in July 2018. The City's unwillingness to issue 4 RABs could not have been anticipated. The delay in commencing Claremont's phase 1 project also impacted the commencement of Claremont's phase 2 project.

In addition, the Applicant represents that the delay in the start of construction, due to the Riverkeeper Litigation, of the Applicant's public private-partnership with Crossroads Companies, on the West Campus, for the development of a 73,413 square foot ShopRite and related parking, had a direct effect on the remaining development on the West Campus. The ShopRite is a driver for individuals to reside on the West Campus and the ShopRite construction delay contributed to the inconsistent occupancy of units of Claremont's phase 1 (i.e., unable to rent 3 bedroom units). This caused the Claremont to amend the unit mix in in phase 2, which the Members approved in February of this year.

When the Members' approved the second amendment, Claremont represented that it had the required financing, permits and approvals in place to commence construction by the end of March of this year. However, Claremont and the Applicant later discovered that they had to return to the City to present an updated and revised chapter 31 capital plan review to increase the number of approved units in Claremont's phase 2. On June 18, 2019, the Applicant presented and the City's planning board voted in favor of the revised chapter 31 application. In addition, Claremont needed confirmation from the City that the existing PILOT agreement would not require an amendment. In July 2019, the City confirmed that no amendment to the PILOT was required.

As a condition to approve the commencement of construction, in July of this year, Claremont submitted a project timeline showing that construction would commence in August 2019 and the phase 2 building would be substantially complete or before September 9, 2020. The Applicant's development and finance consultant vetted the project timeline with Claremont, which represented that the schedule represented overtime and work on selected Saturdays to complete the construction by September 9, 2020. In addition, Claremont had just completed the phase 1 building, which was of similar size and scope to the phase 2 building, so it had prior experience of what to expect, excluding unforeseeable site and weather conditions, during the construction of phase 2 building. Staff reviewed the schedule and Claremont's representations regarding the project timeline and found them reasonable and on July 25th of this year, provided a letter to the Applicant stating that it has satisfied all the conditions of the February 2019 Members' approval and construction could commence on phase 2.

Subsequently, in August of this year, even though Claremont continued to be confident that it could substantially complete the building by September 9, 2020, Claremont's lender requested that the approved timeline for construction be extended to June 30, 2021, to account for typical unforeseen conditions during a project's construction (e.g., material delivery delays, weather, unforeseen site conditions, worker strike). Claremont did not anticipate such a request from its lender. The lender will not fund the construction loan unless the timeline is extended until June

30, 2021. To remain on schedule, the Applicant has represented that it has commenced construction of phase 2 using the project's equity.

Recommendation

I recommend the Members approve extending the construction completion timeline for Claremont's phase 2 project from September 9, 2020 until June 30, 2021. Claremont and the Applicant have diligently pursued the phase 2 project and have had some unanticipated project delays (i.e., changing the financing because the City did not want to issue 4 RABs, revising the unit mix in phase 2 project due to the unfavorable renting experience in phase 1, the impact of the delayed ShopRite development, and request from the lender to extend the phase 2 project schedule).

Tim Sullivan
Chief Executive Officer

att.: Exhibit A
Prepared by: Juan Burgos

EXHIBIT A

ADOPTED
SEP 10 2015

Attachment

Resolution of the New Jersey Economic Development Authority Regarding Approval of New Jersey City University's Higher Education Public Private Partnership Application to Develop a Mixed Use Development – West Campus Blocks 2 and 3 (Claremont Construction Group, Inc.)

WHEREAS, the Members of the New Jersey Economic Development Authority have been presented with and considered a Memorandum in the form attached hereto; and

WHEREAS, a Memorandum requested the Members to adopt a resolution authorizing certain actions by the New Jersey Economic Development Authority, as outlined and explained in the said Memorandum.

NOW, THEREFORE, BE IT RESOLVED by the New Jersey Economic Development Authority:

1. The actions set forth in the Memorandum attached hereto, are hereby approved, subject to any conditions set forth as such in said Memorandum.

2. The Memorandum, attached hereto, is hereby incorporated and made a part of this resolution as though set forth at length herein.

3. This resolution shall take effect immediately, but no action authorized herein shall have force and effect until 10 days, Saturdays, Sundays, and public holidays excepted, after a copy of the minutes of the Authority meeting at which this resolution was adopted has been delivered to the Governor for his approval, unless during such 10-day period the Governor shall approve the same, in which case such action shall become effective upon such approval, as provided by the Act.

DATED: September 10, 2015

EXHIBIT 23

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

MEMORANDUM

TO: Members of the Authority

FROM: Timothy J. Lizura
President and Chief Operating Officer

RE: Higher Education Public Private Partnership Program
New Jersey City University
West Campus Blocks 2 and 3 (Claremont Construction Group, Inc.)

DATE: September 10, 2015

Summary

The Members are asked to approve New Jersey City University's ("Applicant") application to develop a mixed use development, in two phases, that will include 330 market rate apartments, 21,250 square foot commercial space, and 243 structured parking spaces ("Project" or "Development"), on approximately ±2.6 acres on the Applicant's campus under the Higher Education Private Public Partnership Program (the "Program") established by P.L. 2009, c. 90, as amended (the "Act"). The Project's total development cost will be approximately ±$96.83 million. The Applicant currently owns the ±2.6 acres. Under the Act, the "Authority shall review all completed applications" and "[n]o project shall be undertaken until final approval has been granted by the [A]uthority." N.J.S.A. 18A:64-85.f(3). Staff performed a substantive review of the application and supporting documentation in accordance with the Act and pursuant to the Authority's Higher Education Institution Public-Private Partnership Program Guidelines (the "Guidelines") and recommends approval of the Applicant's Project. The Authority's approval will be subject to the Applicant submitting additional items that are outlined below.

Background

The Authority's Scope of Review

Under the Program, the Authority must review and approve an application, which, in order to be complete, must contain the following items:

1. a full narrative description of the project
2. a public-private partnership agreement between the state or county college and the private developer
3. a land lease or land agreement
4. financial information including the estimated costs and financial documentation for the project
5. a detailed project schedule (i.e. timetable) for completion of the project extending no more than five years after consideration and approval
6. DPMC classification information for the required contractors and/or subcontractors
7. evidence of arrangements for entering into project labor agreements and paying prevailing wages as required by the Act
8. evidence of arrangements for issuance of the required bonds

The financial documentation shall include a long-range maintenance plan that will "specify the expenditures that qualify as an appropriate investment in maintenance." In addition, the Authority may impose "other requirements that the [A]uthority deems appropriate or necessary."

Within the Act's deadline, the Applicant submitted a complete application for the Project with adequate exhibits and supporting documentation which included an adequate form of the Ground Leases and Project Development Agreements which serve as the partnership agreement for this Project. Real Estate Division Staff deemed the application complete.

The Act requires that any project undertaken through the Program must be financed in whole by the private entity. Staff has reviewed the project documents to confirm that the private partner assumes full financial and administrative responsibility for the construction of the Project and that the Applicant has no financial responsibility for the construction of the Project. The Act also requires that the State or institution of higher education must retain full ownership of the land upon which any project undertaken through the Program. Staff has reviewed the Project documents to confirm that the Applicant will retain full ownership of the land where the Project will be developed.

Project Description and Schedule

A. West Campus Development Plan

1. Overview

The Applicant's Facilities Master Plan outlines the university's planned expansion on the West Campus. In 1970's, the Applicant started the process to acquire ±21.3 acres, former industrial land, which is bounded by Route 440 to the North, Carbon Plan to the East, South Road to the West, and Wes Side Avenue to the South. In 2005, Jersey City adopted the West Campus Redevelopment plan, which incorporates the Applicant's vision:

> The University intends for the West Campus to be more than a typical college campus. It will also be a place for city residents to work, shop and live. When fully developed, the project will include a significant amount of retail space, structured parking, student as well as market-rate housing, academic teaching spaces, academic offices, a performing arts center, and primary and secondary schools.

2. West Campus Environmental History

Honeywell remediated the chromium related contamination on the property, which is the subject of a consent decree and deed restrictions. Additionally, the Applicant recently remediated non-chromium contamination that was discharged on portions of the property, which is also subject to a deed restriction.

3. West Campus Site Plan

The Applicant's current West Campus Master Plan, which is attached as Exhibit A, includes:

- A performing arts center
- student dorms (currently being developed as a public private partnership between the Applicant and RISE, formerly known as Ambling University Development Group)
- 581 market rate apartments, ±50,000 SF ground floor retail, and 620 parking spaces (which includes this Project), and
- A supermarket, fitness center, ±650 structured parking spaces, a rooftop restaurant and tennis courts.

B. Blocks 2 and 3

In December 2014, The Applicant issued a Request for Qualifications to design, develop, construct, manage a mixed-use building, including apartments and commercial space, on Block 2 and 3 of the West Campus. Eight development teams responded to the RFQ.

In April 2015, the Applicant issued, to the shortlisted RFQ respondents, a Request for Proposals to design, develop, construct, manage, a mixed use residential and commercial project on Blocks

2 and 3. Two parties responded to the RFP, and a result of the process, the Applicant selected Claremont Construction Group, Inc. to finance, plan, design, construct, operate and maintain a mixed-use development on Blocks 2 and 3. In June 2015, the Applicant's Board of Trustees approved the Claremont Construction Group, Inc. as the private partner to develop the Project under the Act and authorized the appropriate officials of the Applicant to negotiate and execute documents to consummate the transaction.

Claremont Construction Group, Inc., will create 2 single purpose entities, Claremont West Campus Urban Renewal I, LLC ("Block 2 Owner") and Claremont West Campus Urban Renewal II, LLC ("Block 3 Owner") (collectively "Project Owners"), that will enter into a ground leases and development agreements with the Applicant. The Project Owners will own, finance, develop, construct, and manage the improvements.
In the spring of 2016, the Block 3 Owner will commence construction on Phase 1; in the summer of 2017, the Block 2 Owner will start construction on Phase 2. The proposed Development will include 330 market rate apartments, 21,520 SF of commercial space, and 243 structure parking spaces allocated as follows:

Phase 1: Block 3
Residential Units

Unit Type	Units	Avg. SF	Monthly Rent
Studio	35	647	$1,807.25
1 BR	104	817	$2,109.49
2 BR	24	1,150	$2,731.25
3 BR	0		$0.00
Total	**163**		

Retail Space

	$SF Rent	SF	Annual Total
Tenant 1	$28.00	10,048	$281,344
	Total	**10,048**	

Phase 2: Block 2
Residential Units

Unit Type	Units	Avg. SF	Monthly Rent
Studio	44	675	$1,914.23
1 BR	86	925	$2,376.84
2 BR	31	1,200	$2,671.50
3 BR	6	1,300	$3,228.06
Total	**167**		

Retail Space

	$SF Rent	SF	Annual Total
Tenant 1	$25.00	5,780	$144,500
Tenant 2	$35.00	3,286	$115,010
Tenant 3	$35.00	2,406	$84,210
	Total	**11,472**	

Total Apartments	**330**
Total Retail SF	**21,520**
Total Square Feet	**484,320**

The Project will include 2 buildings with 6 stories each, allocated as follows:

- First Floor: residential entrance, commercial retail and parking
- Second Floor: structured parking
- Third through Sixth Floors: luxury residential apartments.

C. Estimated Job Creation

The Project Owners estimate that the Project will create 900 construction jobs and 100 permanent jobs (residential and commercial combined).

D. Encouraging Green Building

The Act encourages projects to adhere to the Leadership in Energy and Environmental Design ("LEED") Green Building Rating System and/or the NJ Green Building Manual. The Project Owners have agreed to incorporate the following green building design components into the Project:

- Efficient units layouts reducing heating and cooling loads
- Development close to mass transit with less dependency on vehicular traffic
- Locally sources and/or recycled building materials
- Energy Star appliances
- Low VOC paints and finishes
- Low flow plumbing fixtures.

E. Project Schedule

The Applicant provided a schedule to complete the two phases of the Development by the end of August 2018. This end date complies with the requirement of the Act that projects be completed within 5 years of the Authority's approval date.

In accordance with the Guidelines, staff reviewed the Applicant's description of the Project, its design, and project schedule. Staff concludes that the Applicant has proposed a feasible project plan and design, and that the Applicant has proposed a schedule that will meet the Act's five year completion deadline.

Summary of the Partnership Documents

The Applicant and each Project Owner will enter into a lease and development agreement for each phase of the Project. The documents are the substantially similar, except for items specific to each development phase.

The parties' roles, responsibilities and benefits in the Project are summarized below:

A. *Applicant*

1. *Lease Term.* The Applicant will lease the property for a 50 year term, commencing on Term Commencement Date, which the parties will select by executing a written agreement. The Applicant has provided the Project with one 25 year option term under the Lease.

2. *Initial Payment and Rent.* The Applicant will receive rent payments as follows:

Milestone	Payment
Block 3 Initial Payment at lease execution	1% of total development cost, or $464,023.07
Block 2 Initial Payment at lease execution	1% of total development cost, or $504,260.69
Starting on the Rent Commencement Date	$2,500 per apartment unit (with a minimum amount of $2,100 per apartment unit) plus $1.75 per SF of occupied and rented commercial retail space
Upon the 5th Anniversary of receipt of the Certificate of Occupancy and Every 5th Anniversary Thereafter	Increase the prior 12 months rent by the lesser of: (a) percentage increase of the "Consumer Price Index for New York/New Jersey All Urban 1982-84=100" for the preceding 5 years; or (b) 7.5%

The average lease payment during the term is to be $1.397 million. The present value of the lease payments, using a 4% discount rate, is currently estimated to be $24.673 million.

If the Members pass a resolution approving the Project prior to October 1st, the Initial Payment will be refundable if the Project Owner provides notice that the Project "is unacceptable" after performing investigatory activities. If the Members pass a resolution approving the Project after October 1, 2015, the Initial Payment will be non-refundable.

3. *Utilities and Approvals.* Applicant will cooperate with the Project Owner to file utility applications and "documents necessary to obtain" utility services.

4. *Sell or Assign the Property.* Subject to the terms of the Lease and the Act's requirements, the Applicant may sell or assign the Property.

5. *Quiet Enjoyment.* The Applicant agrees that during the lease term, the Project Owner "shall lawfully and quietly hold, occupy and enjoy the Premises . . . without hinderance or molestation by or from anyone claiming by, through or under the [Applicant]," except for Permitted Exceptions.

6. *Right to Perform Project's Owner's Lease Covenants.* The Applicant may, after providing the required notice and the Project Owner has failed to perform, "pay any Imposition . . . take out, pay for, maintain or deliver any [required] insurance, . . . cause any lien . . . to be discharged. . ., or perform any other act" required by the Lease.

7. *Environmental Issues.* The Applicant "shall comply with all requirements related to the ongoing and larger site wide remediation of the [West Campus] and shall enforce all such obligations of responsible parties" as noted in the Development Agreement.

8. *Change Orders.* The Applicant will review and approve the Project change orders.

9. *Other Work.* The Applicant may perform "other work" on the West Campus, so long as it does not "materially interrupt, interfere with, hinder or delay" the Project.

10. *Ownership of Improvements at End of the Term.* At the end of the Lease term, Applicant is entitled to all the improvements (excluding trade fixtures and business improvements not part of the Project) free and clear of all liens.

B. *Project Owner*

1. *Rent and Impositions.* The Project Owner will pay the initial payment, the fixed rent, and any required impositions.

2. *Obtain Required Approvals and Utility Services.* The Project Owner must obtain all required approvals and required utility services for the Project.

3. *Design and Construction.* The Project Owner will be responsible for the design, development, construction, equipping and furnishing the Project as required by the Development Agreement and the Lease.

4. *Development Team.* The Project Owner will be responsible for the hiring, supervising and compensating the design, construction and other professionals necessary to develop the Project.

5. *Project Financing.* At its sole cost and expense, the Project Owner will be responsible for the Project budget and financing the Project's development and construction.

6. *Project Schedule.* The Project Owner will be responsible for delivering the Project within the time frame of the approved project schedule.

7. *Environmental Issues.*

   a. *No Discharge.* During the term of the Lease, the Project Owner "shall not permit . . . any Person to, use, handle, store, generate, manufacture, transport, discharge or release any Hazardous Materials" on the property.

   b. *Compliance with Environmental Laws.* The Project Owner agrees to comply with all applicable environmental laws.

8. *Utility Service.* The Project Owner will be responsible for all utility charges at the site.

9. *Indemnification.* The Project Owner agrees to indemnify, defend and hold harmless the Applicant "arising . . . in connection" with the Project Owner's "possession, use, occupancy or management" of the Project.

10. *Bond and Insurance.* The Project Owner will obtain insurance require by the Lease and bonds required by the Development Agreement.

Partner's Experience and Qualifications
The Guidelines call for an assessment of the experience and qualifications of the development partner and its team.

A. Project Owners
Established in 1954, Claremont Properties, Inc., and Claremont Construction Group, Inc., have developed over 2,000 residential units and 1 million SF of commercials space totaling over $.5 billion. Claremont Properties will serve as each Project Owner's developer and Claremont Construction will serve as each the Project Owner's general contractor.

The following chart provides a sample of Claremont's work:

Project	Description	Dev. Cost
Residential Apartments & Parking Structure, South Orange NJ	215 residential units	$50,000,000
NJIT Parking Deck	982 parking spaces	$20,000,000
Baxter Terrace, Newark, NJ	90 residential units community center	$20,000,000
Spruce Senior, Newark, NJ	57 residential units	$12,250,000
	TOTAL	**$102,250,000**

B. Marchetto Higgins Stieve

Established in 1982, Marchetto Higgins Stieve has significant experience in urban projects, and the firm has worked on 200 mixed use developments (residential and commercial) totaling $4 billion in development cost.[1]

C. Alliance Residential Property Management

This property management firm, established in 2000, currently has a nationwide property portfolio (residential and commercial properties) of over $9 billion, which includes 71,000 residential units.

Staff concludes that the Project's development team has sufficient experience to own, develop, construct, operate and maintain the Development.

Project Financing and Feasibility

A. Sources and Uses of Funds

The following chart summarizes the project's uses and sources:

	Phase 1 Block 3	Phase 2 Block 2	Total
Acquisition	$198,283	$52,500	$250,783
Improvements	$39,975,916	$43,529,751	$83,505,667
Professional Services	$1,695,897	$1,244,500	$2,940,397
Financing and Other Costs	$3,536,240	$4,643,144	$8,179,384
Contingency	$144,130	$280,496	$424,625
Development Fee	$2,201,841	$2,099,282	$4,301,123
	$47,752,307	**$51,849,672**	**$99,601,979**

[1] Id. Tab 4 at p9.

	Phase 1 Block 3	Phase 2 Block 2	Total
Perm Loan	$36,151,730	$39,243,154	$75,394,885
Equity	$7,583,537	$8,122,430	$15,705,968
Redevelop. Area Bond	$4,017,039	$4,484,087	$8,501,126
	$47,752,307	**$51,849,672**	**$99,601,979**

The Application included a letter of interest, with no stated terms, from HFF; the firm will assist the Project Owners in placing debt for the Project. Currently, the Project Owners have assumed that the initial permanent loan currently will have a 10 year term, with a 30 year amortization and 5.5% interest rate.

The Redevelopment Area Bond (RAB) will be repaid by a payment in lieu of taxes (PILOT) included in the buildings operating budgets, which starts at approximately $497,710 for Block 3 and $550,000 for Block 2, increasing annually at ±10% percent. The development budget will capitalize the initial deposit into long-range maintenance reserve, estimated by Cohn Reznick for the Project Owners, as follows: Block 3 at ±$1.424 million and Block 2 at ±$1.350 million.

B. Operating Proforma

The operating proformas use low annual increases for income (2% residential, 1% all others) and expenses (1%, except for the reserve at 2% and PILOT at 10%). However, when the annual expense inflation rate is increased to 3%, the Project continues to have sufficient net cash flow to maintain a debt service coverage ratio of 1.25 even when the annual income increase assumptions are held constant.

C. Market Study

The Outeau Group prepared the Project's market study, which included the following findings:

1. *Hudson County's Percentage of Households that rent is Greater than the State Average.* The share of Hudson County households that rent is 68%, compared to 35% in the rest of New Jersey.

2. *Favorable Market Demographics.* The Project's market area has a high percentage of 1 and 2 person households (64%), households with no persons under 18 years of age (73%), households that have never married, widowed, and single head of households (66%). In addition, persons between the ages of 25 and 34 account for 23% of the market areas population. These types of households are are attracted to the proposed Development.

3. *The Target Market Demographic Can Afford the Proposed Rents.* Forty-seven percent of the household within 5 miles of the Project site earn more than $72,000 (the minimum income threshold). In addition, 52% of person between 25 and 34, and 63% of the persons between 35 and 44 have sufficient income to afford the proposed rents.

4. *Rental Units Will Continue To Be in High Demand.* The market will continue to demand rental units, requiring an additional 10,560 units by 2020.

5. *Phasing the Project will Aid in Unit Absorption.* Because the Project site is in a secondary market to accommodate a slower absorption than would be found in a project in a primary market (e.g., downtown Jersey City).

6. *Project Fosters Urban Living with Proximity and Access to Public Transportation.* The Project site is less than ½ mile from the light rail line, and Jersey City provides excellent access to various forms of public transportation (light rail, PATH, buses, and ferries) hubs Thirty-three percent of Hudson County's households do not own a vehicle.

The firm concludes that the proposed Development's unit mix and design "is well aligned to economic and demographic trends" of the target market.

D. Long-Range Maintenance Plan

The Act requires that the budget, operating proforma and financial documents submitted with an application must include a long-range maintenance plan that specifies expenditures that qualify as an appropriate investment in capital improvements and maintenance. As part of its financial documentation, the Applicant submitted a long-range maintenance plan which included standards for the calculation of funds for replacement over the useful life of the project, detail for the initial calculation of need for replacement funds (e.g., estimated items, useful life, replacement costs, quantity and total costs), estimated the total amount required, and provided a schedule for use of the reserve funds over the Project's life. The Project Owners will pay for long-range maintenance items from a capitalized reserve funded from the development budget, and operating income that also will fund the long-range maintenance reserve. Staff concludes that the Project Owner will have sufficient capital reserves to meet the Project's long-range maintenance needs during the Lease term.

The plan submitted complies with industry standards for replacement reserve accounts and capital maintenance plans and the long-range maintenance guidelines prepared by the Authority's consultant and adopted by the Authority. Accordingly, staff concludes that Applicant has submitted an adequate long-range maintenance plan for the Project.

After reviewing the project's budget, operating proforma, market study, and supporting information, the Real Estate Division's staff has assessed the soundness of the financial plan and concludes that the Project is financially feasible and that there is a need for the Development. Staff also concludes that the Project's development costs and projected operating expenses are reasonable and within current market conditions.

DPMC Classification
The Division of Property Management and Construction within Treasury has classified Claremont Construction under general construction with a contract capacity of $153 million and a bonding capacity of $200 million.

Other Requirements of the Act
In accordance with the requirements of the Act, the Applicant has produced evidence and has certified to comply with the following requirements of the Act:

- *Prevailing Wage.* The private partner will pay prevailing wage as required by the Act ("Each worker employed in the construction, rehabilitation, or building maintenance services of facilities by a private entity that has entered into a public-private partnership agreement with a State or county college . . . shall be paid not less than the prevailing wage rate")

- *Project Labor Agreement.* The private partner will enter into the required project labor agreements during the construction, operation, and long-range maintenance of the Project (the Applicant included a draft agreement in its submission)

- *Bond.* The private partner will post the required payment bond or have the bond posted on its behalf.

Recommendation
Staff recommends that the Board give final approval of the application subject to the following conditions being met to the satisfaction of appropriate staff for **each phase** of the Project (e.g., Chief Executive Officer, President and Chief Operating Officer, Senior Vice President of Finance and Development, or the Director of the Estate Division):

1. Providing a copy of the executed Lease and Development Agreements with attachments (excluding the plans and specifications, if applicable)

2. Submitting, in final form, the development and operating budgets in the Authority's Excel template (substantially the same as the documents reviewed by the Authority)

3. Submitting, in final form, project labor agreements for the construction and contracts to implement the long-range maintenance plan, which require not paying less than prevailing wage and to the greatest extent possible, enhances employment opportunities for individuals residing in the county of the project's location

4. Submitting, in final and satisfactory form, posted bonds guaranteeing prompt payment of moneys due to the contractor (and/or subcontractors)

5. Submitting a final copy of the Project's financing commitments:

    a. redevelopment area bond approval resolution and final version of the bond indenture
    b. PILOT approval resolution and the PILOT agreement
    c. executed private financing commitment (construction and permanent loan)
    d. if applicable, executed private equity financing commitment
    e. current financial statement, no more than 3 months from the date of submission, of the Project Owner evidencing the equity financing for the Project

6. Submitting other items (i.e., any other document which may contain a material business term to the "partnership agreement" between the parties) that the Applicant must provide in order to obtain the Authority's final approval

7. Providing quarterly reports through the end of construction

The Applicant **shall not** permit the Project Owners to commence construction **on any phase** of the Project until the Authority's staff receives and reviews the requested items listed above and the Authority's staff issues correspondence stating that conditions in this memo are met.

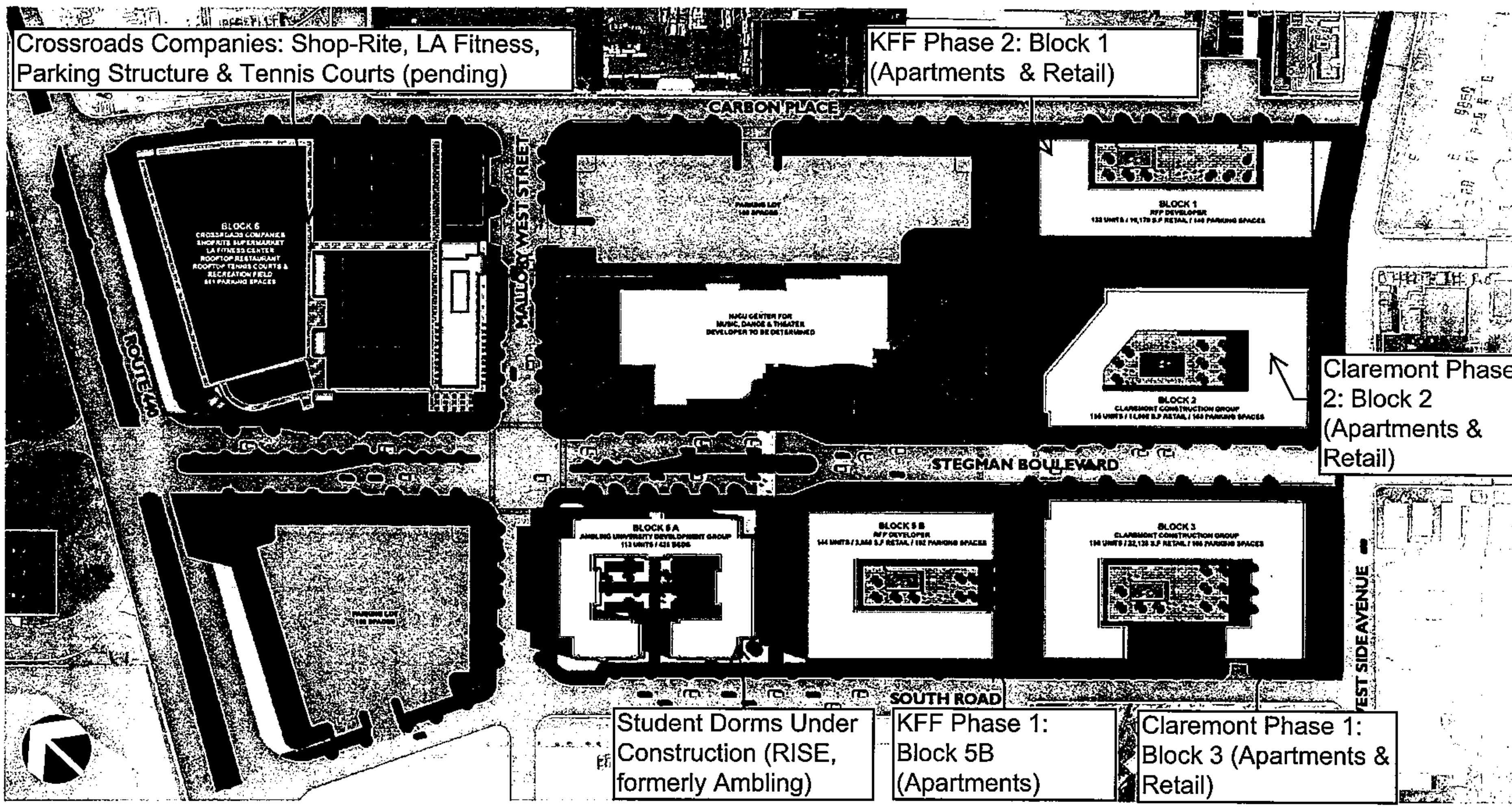
Recommendation

In summary, I ask for the Members to authorize the Authority's staff to approve the project upon meeting the conditions outlined in this memo.

Timothy J. Lizura
President and Chief Operating Officer

Prepared by: Juan Burgos

EXHIBIT A: WEST CAMPUS SITE PLAN



NEW JERSEY CITY UNIVERSITY | WEST CAMPUS MASTER PLAN

Location Jersey City, New Jersey

BOARD MEMORANDUM

NJEDA

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: September 12, 2019

SUBJECT: Projects Approved Under Delegated Authority –
For Informational Purposes Only

The following projects were approved under Delegated Authority in August 2019:

Direct Loan Program:

1) 102 Gray Street Holdings LLC (PROD-00187755), located in Paterson City, Passaic County, is a real estate holding company formed to own and manage the project property. The operating company, JRL Imports Inc. was formed in 2013 to sell fashion accessories to wholesale marketers and online retailers. The Company also has its own brand called MKF Collection by Mia K. Farrow. The EDA approved a $524,000 Direct loan and Cross River Bank approved a $655,000 loan. The combined proceeds will be used to purchase the project property and facilitate expansion. Currently, the Company has 21 employees and plans to create seven new positions within the next two years.

Premier Lender Program:

1) Salem NJ 45 Griffith Street LLC (PROD-00187731), located in Salem City, Salem County, was formed in 2019 as a real estate holding company for the project property. The operating company, Apparel Distribution, Inc., was established in 1994 to provide distribution, freight, and trucking services throughout the continental US, serving hundreds of manufacturers, importers and distributors, shipping to the largest retailers in the country. Services include packing, scanning, cross dock and trans load services, storage and inventory control and returns. Provident Bank approved a $2,340,000 loan contingent upon a (43%) $1,000,000 Authority participation. Proceeds will be used to purchase the project property to expand its operations. The Company currently has 62 employees and plans to create 30 new jobs over the next two years.

2) Shakti Property LLC (PROD-00187742), located in Hamilton Township, Mercer County, is a real estate holding company that was formed in 2019 to purchase the project property. The operating company, Shakti Group USA LLC, was founded in 1999 as a wholesaler/retailer of specialty food products. The Company has their own brand, "Aara" and their primary products are spices, nuts, lentils and beans sourced from other countries. Bank of America approved a $5,400,000 loan contingent upon a (24.07%) $1,300,000 Authority participation. Proceeds will be used to purchase the project property for business expansion. Currently, the Company has 20 employees and plans to create 27 new positions within the next two years.

Access Pilot Program:

1) Tri State Tape & Label Co., Inc. (PROD-00187810), located in Beverly City, Burlington County, was established in 1968 as a commercial printing business whose services include custom printing, converting, tape and labeling services. Fulton Bank approved a $514,000 loan contingent upon a (50%) $257,000 Authority participation under the Access Pilot Program. Proceeds will be used to refinance a 10-year, $503,485 seller note that was originally used to partially finance the purchase of the business. Separately, Fulton Bank is also providing a $240,000 commercial mortgage to fund the purchase of the real property in which the company currently leases. The Company currently has seven employees and plans to create one new job over the next two years.

Prepared by: G. Robins

NJEDA

EXECUTIVE SESSION

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: September 12, 2019

SUBJECT: Funding for Research with NJ (August 2019 – August 2021)

Summary

The members are requested to approve a total of up to $350,000.00 in funding for Research with NJ (www.researchwithnj.com) through August 2021. The total amount is comprised of four cost components:

Cost Component	Description	Amount
1	Outstanding invoice for completion of work through August 2019 (resulting from budget shortfall due to contract renegotiation, addition of Montclair State portal, and a Treasury appropriation claw back)	$155,000
2	Estimated cost for Year 3 "Stub Year" August 2019 – August 2020 (shared 50% NJEDA - 50% paid by the six participating universities)	$78,000
3	Cost for "Year 4" August 2020 – August 2021 (shared 25% EDA - 75% paid by the six participating universities)	$81,000
4	Additional funds set aside for potential inclusion of other institutions in ResearchwithNJ.com and contract contingency	$36,000
	Total	**$350,000**

In addition, approval is requested to enter into a contract extension with Elsevier through August 2021, with the NJEDA at risk as partner universities will reimburse NJEDA after the contract is signed. The updated contract amendment will be presented to the Board once finalized

Background on the Research with New Jersey Project

ResearchwithNJ.com is a free, online system that provides public visibility to the experts, publications, equipment, academic programs, etc. at New Jersey's six major research universities. There are seven portals total in the system (a New Jersey portal and six separate university portals that sit below it). ResearchwithNJ.com was designed to encourage collaboration between entrepreneurs, businesses, and New Jersey's academic institutions by creating transparency into new opportunities for joint-research, commercial partnerships, workforce development, and the exchange of intellectual capital. ResearchwithNJ.com was developed as a partnership between 5 universities (Princeton University, Rutgers University, Rowan University, New Jersey Institute of Technology, Stevens Institute of Technology), two state agencies (NJEDA, Office of the Secretary of Higher Education (OSHE)), and numerous business community partners (Healthcare Institute of New Jersey, Choose New Jersey, The R&D Council of NJ, BioNJ, NJBIA, etc.).

The New Jersey Economic Development Authority (NJEDA) and Office of the Secretary of Higher Education (OSHE) formally developed a partnership through a Memorandum of Understanding (MOU) approved by the Board in July 2018 to develop ResearchwithNJ.com utilizing an appropriation of $1.5 million from the FY2018 State budget. The NJEDA served as the procuring entity for the contact. An open RFQ process, which included an evaluation committee[1] comprised of EDA, OSHE, and additional stakeholder organizations, was run and evaluated bids for both configured off-the-shelf solutions and bespoke designed database systems. The evaluation committee selected Elsevier as the contractor to build the ResearchwithNJ.com database and portal using the company's off-the-shelf software platform PURE.[2] The NJEDA was the contracting entity for the contract with Elsevier.

Background on the Elsevier Contract

The NJEDA's contract with Elsevier stated that the total cost for the project was not to exceed $1.5 million for two years of development and system support starting August 2017 and running

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[1] The evaluation committee ("the Committee") comprised of the Senior Vice President of Governance, Communications & Strategic Initiatives - EDA, the Chief Information Officer – EDA, the Director of Marketing and Public Affairs – EDA, the Program Manager of the Commercialization Center for Innovative Technologies – EDA, the Assistant Secretary for Finance, Accountability and Technology – OSHE, the Director of Finance – OSHE, and two non-voting Subject Matter Experts (the Vice President for Research - Rutgers University, and the Director of Corporate Engagement and Foundation Relations - Princeton University), then reviewed and scored the two responsive proposals.

[2] As part of its review and evaluation of the proposals, the Committee considered a group of pre-established evaluation criteria, published in the RFQ/P, which included multiple factors that were established in the RFP/Q, including documented experience with contracts of similar size and scope, and experience of the management and staff, among other factors. Based on a thorough review of proposals, the Committee recommends the selection of Elsevier. This company demonstrated the necessary experience to undertake the services related to the Data System. Based on a scoring of "1" through "5" with "1" representing "Poor" and "5" representing "Excellent," Elsevier received an overall score of 4.31 NJ Tech Ventures, LLC received a total score of 2.58, which did not meet the required score of three (3) or higher to be considered for award.

through August 2019. The contract was organized work into five sequential cost categories: three one-time costs (development; implementation; launch); one variable per profile cost (profile subscriptions); and one variable per year cost (ongoing monitoring for security and performance).

At the end of the original contact period (August 2019), Elsevier had completed work for all the original five universities (Rutgers, Princeton, Rowan, New Jersey Institute of Technology, and Stevens Institute of Technology) as well as an additional university, Montclair State University. Montclair State University was initially not one of the universities included in the ResearchwithNJ.com database as they were not yet deemed an "R1" official research university in June 2017 when the project commenced. However, Montclair State University received its R1 status later that year and requested to be part of the ResearchwithNJ.com consortium of universities in March of 2018 (totaling six).

To accommodate additional institutions, Elsevier proceeded pursuant to the additional work clause contained in the RFP utilizing the hourly rates contained in the Fee Schedule submitted with their Proposal. The additional cost of Montclair State University was $23,040 for development, implementation and launch. Montclair State University was added to the database in the fall of 2019.

Contractual negotiations and current contract status

To date, the EDA has paid Elsevier for $1,110,000 over four separate invoices dating from December 2017 through August 2018.

In April 2018, NJEDA staff brought to Elsevier's attention that the Authority believed that the project billing invoices did not fully align with the fee structure submitted in the proposal and agreed to in the signed contract. Specifically, the Authority had questions regarding the number of profiles being billed and the fact that security and performance monitoring were being charged before the project was fully operational. However, given that the project was underway, and a number of key project development milestones had been met satisfactorily and on schedule, and that Elsevier had begun development of the Montclair State University portal at risk (i.e., without a formal agreement for the additional development costs), NJEDA staff decided to pay the initial set of invoices in good faith with the commitment to reconcile these issues through future negotiations and invoices.

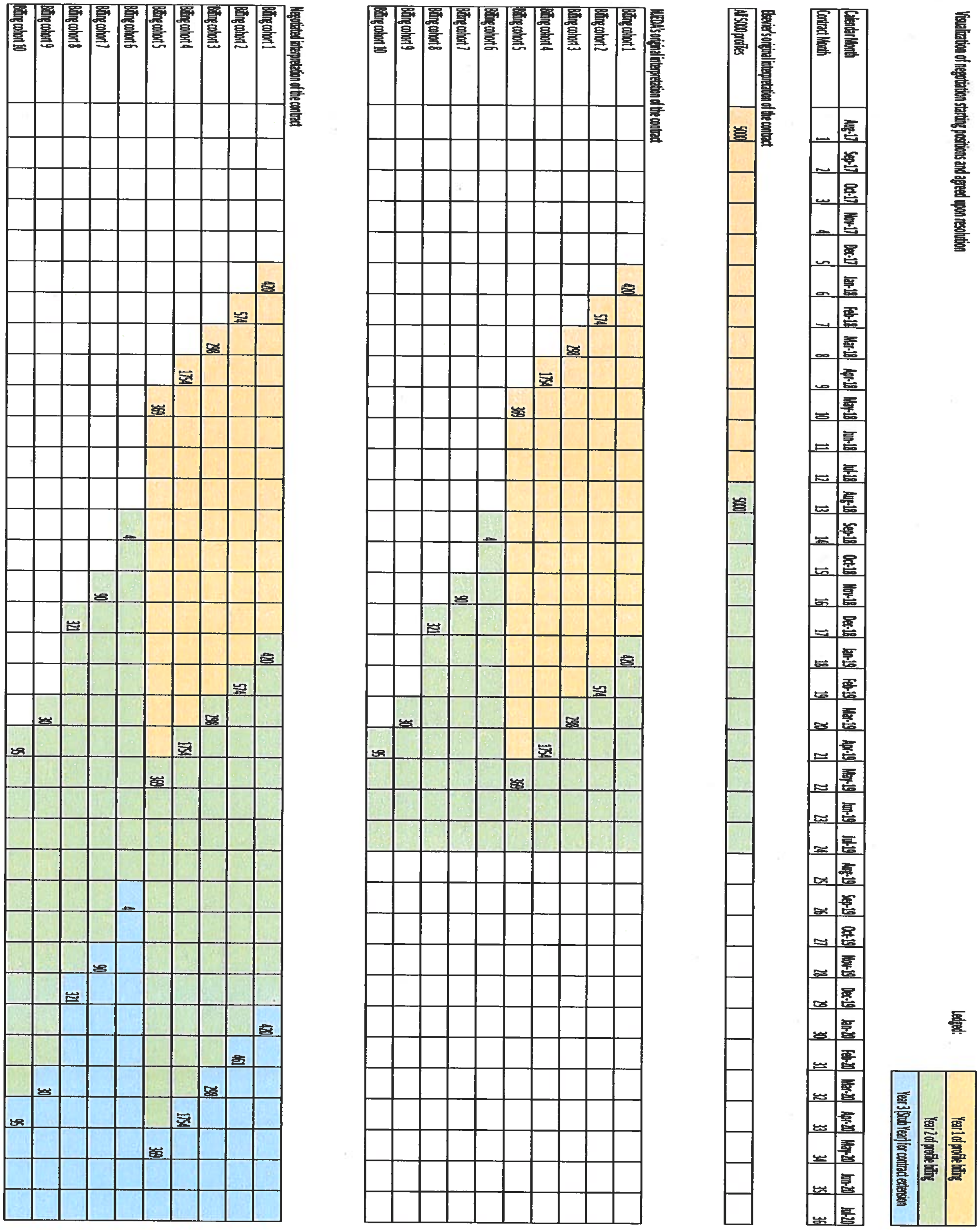
Over the course of 2019, NJEDA and OSHE staff have been in negotiations with Elsevier to resolve the billing invoice issue. The primary question is driven by a difference in interpretation of when a profile becomes "active" in the system and therefore can be invoiced. Elsevier deemed all 5,000 subscriptions "active" at the inception of the contract in August 2017 and believed the profiles should be billed on an annual basis. NJEDA and OSHE staff deemed each subscription active only when it was viewable to the public and believe that profiles should be billed on an annual pro-rated basis.

In August 2019, the NJEDA and OSHE Staff were able to come to a mutual resolution on this interpretation with Elsevier that profiles would be billed on annual basis in "monthly billing cohorts" with the invoice period for each cohort starting in the month that the profile was originally loaded into the system (i.e., available to the university to edit, but not necessarily published by the university to the public portal). Both parties also agreed that profile subscriptions that were loaded into the system less than 1-year prior to August 2019 would retain the balance of their annual subscription value after August 2019, if NJEDA and Elsevier were to agree to a contract extension. Elsevier had a strong preference to bring all monthly billing cohorts onto the same annual invoice schedule. Therefore, NJEDA and Elsevier have agreed to make August 2019 – August 2020 a "stub year" to allow for all 4,029 active profiles renew in a single month. See Figure 1 below for a visualization of the negotiating starting position and the negotiated agreement.

The implication of this negotiated agreement is that the State and its partners would owe more than it had originally planned for in contract years 1 and 2 (because profiles renewed or launched between August 2018 and August 2019 are being charge a full annual subscription fee instead of a monthly pro-rated fee), however the State and its partners are able to realize significant savings in a year 3 "stub year" contract extension (~$156,000 vs ~$322,000).

Given this agreement, the NJEDA now owes a balance $242,030 to Elsevier. Due to the above change in contract interpretation, the addition of Montclair as a R1 university at ~$23,000 and a ~$48,000 claw back of appropriated funds from Treasury, the NJEDA has an approved budget shortfall of approximately $155,000. This $155,000 is listed as the Cost Component #1 of the funding request.

Figure 1: Visualization of Contact Negotiation Positions and Agreement Terms



<u>Rationale for continuing the ResearchwithNJ.com project</u>

The EDA, OSHE, the six universities, and the business and industry associations on the ResearchwithNJ.com Advisory Board all believe that ResearchwithNJ.com is a worthwhile investment and that additional project funding will allow the project to fully mature. At least two more years of joint support from the EDA and the universities will help determine the long-term viability of the database.

At current, ResearchwithNJ.com contains 4,029 expert profiles, 490 research units from the six universities, 94 core facilities/equipment, 2,707 grants and projects, 228,074 publications, and 33,821 press and media entries. To date, ResearchwithNJ.com has received over 40,000 unique visitors, nearly 50,000 sessions, and over 130,000-page views for the NJ State portal alone. Roughly 25% of its visitor's hail from other countries.

In addition, a series of focus groups consisting of over 50 prospective users from academia, private industry, and government revealed that users saw considerable potential in making people-to-people and people-to-university connections using the portal.

Figure 2: ResearchwithNJ.com Dashboard - Cumulative from Launch on June 5, 2018

Metric	2018 YTD	2019 YTD
Inquiries (either via in-person, email, or phone)	4	7
#Unique Users	9,215	42,735
#Sessions	11,413	49,634
#Page Views	36,137	102,977
Avg Time on Site	1:39	0:57
#Promotional Events/Articles	8	13
#Media Mentions	4	14
National vs International Traffic	70% / 30%	76% / 24%

<u>Note</u>: These statistics reflect the ResearchwithNJ.com (New Jersey portal only and not inclusive of all universities).

Long-term university cost sharing plan

While there is initial evidence that ResearchwithNJ.com is a worthwhile economic development tool and all members of the ResearchwithNJ.com Advisory Board (including university partners and private sector partners) would like to see the project continue, the State failed to fund OSHE's FY2020 project extension budget request.

At this time, the NJEDA Staff do not believe that it is appropriate for the Authority to fund 100% of the long-term operating funding for ResearchwithNJ.com. Therefore, Staff have reached out to the six universities to agree upon a plan to share long-term operating costs. NJEDA has proposed a cost-sharing ramp-up plan where the universities contribute funding for the project based upon their respective share of the profiles on the system.

As proposed, for year three of the contact, the EDA will pay 50% of the subscription and monitoring costs while in year four of the contract the EDA will pay 25% of these costs. The balance of these cost would be paid by the universities. In July and August, the NJEDA reached out to all six universities to explain the necessity of this request. To date, four of the universities (with exception of Stevens Institute of Technology and Rowan University) have provided a verbal commitment to paying their respective shares of the subscription costs. The NJEDA expects that it will be compensated for a reasonable percentage of the amounts requested from each university based on the proposed cost-sharing plan over the next two years. If a university decides it does not want to help cover its costs, NJEDA reserves the right to remove that university's profiles from the ReseachwithNJ.com portal thereby reducing NJEDA's cost exposure.

Under the current plan, NJEDA would continue to be the primary contracting entity for years 3 and year 4 of the contract and would be reimbursed by the universities. Any outside funding for the project (either from appropriations or other earned income channels, such as advertising, which are currently being explored) would reduce all parties required contributions pro-rata.

Given timing considerations linked to university budgeting processes, it is not feasible for the universities to reimburse NJEDA before a contract extension is signed. Instead, NJEDA will work with the universities to reimburse NJEDA for the Year 3 "Stub Year" before end of calendar year 2019, and then will seek reimbursement for Year 4 in August 2020. The implication of this is that NJEDA will be entering into the contract extension "at risk." However, NJEDA staff believe that the close relationship between the State and the universities on a number of projects helps mitigate this risk.

Funding Requests for Year 3 (Stub Year) and Year 4

As part of the contract extension negotiations, Elsevier originally requested that the State commit to a three-year contract extension through August 2022. The NJEDA Staff is only supportive of an extension through August 2021 ("Year 4 of the project").

With funding support from the universities based on the formulas for the Year 3 (Stub Year) and Year 4, the NJEDA would need to allocate $78,000 for Stub Year (August 2019 – 2020) $81,000 for Year 2 (August 2020 – 2021). These amounts are inclusive of costs of subscriptions and monitoring for performance and security. These amounts are listed respectively as Cost Components 2 and 3 of the funding request.

Additional funds for inclusion of additional institution portals and contract contingency

An additional $36,000 is listed in the funding request to include additional universities or institutions interested in joining ResearchwithNJ.com over the next two years. The NJEDA believes that the growth of ResearchwithNJ.com will benefit from the inclusion of additional universities and institutions as they will add to the collective scope of research assets in the database's inventory. This line item would also cover NJEDA's share of any project contingency that may be needed in the future. The $36,000 is listed as Cost Component 4 of the funding request.

Next Steps

Although the current contract with Elsevier expired on August 2, 2019, the portal has remained open and active while both parties work through contact extension negotiations. In order to continue contract negotiations in good faith, Staff are looking for the Authority Board to approve this funding request of up to $350,000. That funding will cover the current budget overage of $155,000 (which will allow Staff to pay the balance of the currently-owed invoice) and be sufficient to allow staff to finalize negotiations with universities and Elsevier on the extension for year 3 and 4.

A contract addendum is in the process of being developed with Elsevier and includes a clarification on active profiles billing and other accommodations around reporting, data harvesting, and invoicing. The final contract amendment will be submitted to the board in substantially final form for approval.

To ensure continued success in both operations and support, the NJEDA will continue to be the contracting agency through at least 2021. The ongoing annual costs for the database through

August 2021 for the EDA are expected not to exceed $350,000 in total. This memo and plan do not address the funding for this cost beyond August 2021.

Recommendation

Approval is requested of the Board for up to $350,0000 for the shared partial funding for Research with NJ (www.researchwithnj.com) through August 2021. This is inclusive of:

1. $155,000 for completion of work through August 2019 (resulting from budget shortfall)
2. $78,000 for Stub Year (August 2019 – 2020)
3. $81,000 for Year 2 (August 2020 – 2021)
4. $36,000 funds set aside for potential inclusion of other institutions in ResearchwithNJ.com

In addition, approval is requested to enter into a contract extension with Elsevier through August 2021, with the NJEDA at risk as partner universities will reimburse NJEDA after the contract is signed. The updated contract amendment will be presented to the Board once finalized.

Timothy Sullivan,
Chief Executive Officer

Prepared by: Eli Khazzam

APPENDIX 1: Current Contract and Fee Schedule for the ResearchwithNJ project

CONTRACT FOR PROFESSIONAL SERVICES

CREATION AND MAINTENANCE OF A NEW JERSEY ASSET MANAGEMENT DATA SYSTEM

AGREEMENT made this 3 day of AUGUST, 2017, by and between the NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY (the "Authority or NJEDA"), having its address at 36 West State Street, P.O. Box 990, Trenton, New Jersey 08625-0990, and ELSEVIER B.V. (the "Vendor"), having its address at Radarweg 29, 1043 NX Amsterdam, The Netherlands.

The Authority and the Vendor agree as follows:

1. **The Work.** The Vendor shall perform or shall provide the services as specifically detailed in the Vendor's Proposal, dated **June 26, 2017** and the Authority's Request for Proposal ("RFQ/P"), **2017 RFQ/P – 077 RE-BID - THE CREATION & MAINTENANCE OF A NJ ASSET MANAGEMENT DATA SYSTEM** dated **June 15, 2017**, which are attached hereto and made a part of this Contract.

2. **Time.** The Vendor shall render the services described in the Vendor's Proposal and RFQ/P as required by the Authority and generally pursuant to the Fee Schedule included therein.

The initial term of this **Contract is two (2) years, with three (3) one (1) year extension periods**, to be exercised at the sole discretion of the Authority. Pricing shall remain firm throughout the initial two (2) year term of the contract. Pricing for the extension options, if exercised, will be adjusted as stated in the Vendor's Fee Schedule included in Vendor's Proposal.

Notwithstanding the expiration or termination of this agreement, the Authority reserves the right in its sole discretion to extend this agreement on a month-to-month basis beyond expiration or termination until a replacement contract for the **Creation and Maintenance of a New Jersey Asset Management Data System** is entered into by the Authority and replacement Vendor is prepared to engage in the Work. Pricing will be consistent with the most recent year of the executed Contract agreement during any extension on a month-to-month basis, beyond expiration or termination.

3. **Contract Price.** The Authority shall pay the Vendor for the performance of the Work based on the Prices, as stated in the Fee Schedule set forth in the Vendor's Proposal and Fee Schedule clarification. The total Contract Price shall not exceed the $1,500,000 appropriation, per the Appropriations Act of Fiscal Year 2017, P.L. 2016, c. 10 and extensions will be subject to funding approval. The Authority may require services in addition to those agreed to in the *RFQ/P* and the Proposal, which will be subject to funding approval.

4. **Ownership and Use of Documents.** All data, technical information, materials gathered, originated, developed, prepared, used or obtained in the performance of the contract, including, but not limited to, all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video and / or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and print-outs, notes and memoranda, written procedures and documents, regardless of the state of completion, which are prepared for or are a result of the services required under this contract shall be and remain the property of the Authority and shall be delivered to the Authority upon thirty (30) days' notice by the Authority. Regarding software computer programs and / or source codes developed for the Authority, the work shall be considered "work for hire," that is, the Authority, not the Vendor or subcontractor, shall have full and complete ownership of all software computer programs and / or source codes developed. To the extent that any of such materials may not, by operation of the law, be a work made for hire in accordance with the terms of this Agreement, the Vendor or subcontractor(s) hereby assigns to the Authority all right, title and interest in and to any such material, and the Authority shall have the right to obtain and hold in its own name and copyrights, registrations and any other proprietary rights that may be available.

In the event the Vendor's proposal identifies bringing pre-existing intellectual property into a project, the background intellectual property ("Background Intellectual Property") owned by the Vendor on the date of the contract, as well as any modifications or adaptations thereto, remain the property of the Vendor. This contract, grants to the Authority, a non-exclusive, royalty-free license to use any of the Vendor's Background IP delivered to the Authority for the purposes contemplated by the contract and any extensions thereto.

5. **Manner of Payment.** As specified in the RFQ/P and the Fee Schedule, the Vendor shall submit to the Division an original invoice and any other documentation, as may be required by the Authority to process payment. The Authority will make prompt payment to the Vendor, following receipt of and approval of the documentation. The Vendor must submit a Bi-Weekly Status Report to the Authority. Invoices will not be processed unless accompanied by the latest Bi-Weekly Status Report.

6. **Indemnification.** The Vendor shall defend, indemnify, protect and hold harmless the Authority, and its officers, agents, servants and employees from and against any and all suits, claims, demands, losses or damages of any kind arising out of or claimed to arise out of any act, error, or omission on the part of the Vendor, its officers, agents, servants, employees and subcontractors in the performance of services under this Contract. The Vendor shall, at its own expense, appear, defend and pay all charges for attorneys and all costs and other expenses arising from such suit or claim or incurred in connection therewith. If any judgment shall be rendered against the Authority or its officers, agents, servants, and employees for which indemnification is provided under this Section 6, the Vendor shall, at its own expense, satisfy and discharge the same.

The Vendor shall be liable to the Authority for any reasonable costs incurred by the Authority to correct, modify, or redesign any technical information, reports, findings, analyses, surveys or drawings generated or produced by Vendor or any Work performed by the Vendor or its subcontractor(s) that is found to be defective or not in accordance with the provisions of the Contract as a result of any negligent act, error, or omission on the part of the Vendor, its officers, agents, servants, employees and subcontractors. The Vendor shall be given a reasonable opportunity to correct any deficiency.

The indemnification obligation set forth in Section 6 is not limited in any way by the insurance coverage required pursuant to Section 7 of this Contract and shall survive the terms of this contract.

7. **Insurance.** The Vendor shall procure and maintain, at its own expense, liability insurance for damages of the kinds and in the amounts hereinafter provided, from insurance companies licensed, admitted, and approved to do business in the State of New Jersey. The Vendor shall obtain this coverage from A VII or better - rated companies as determined by A.M. Best Company. The types and minimum amounts of insurance required are as follows:

(a) **Commercial General Liability Insurance.**

The minimum limits of liability for this insurance shall be $1,000,000 per occurrence and $2,000,000 in the aggregate and cover liability based on property damage, death and bodily injury.

The Commercial General Liability Insurance policy shall name the Authority and as additional insured. The coverage to be provided under this policy shall be at least as broad as the standard, basic, unamended and unendorsed commercial general liability policy and shall include contractual liability coverage.

(b) **Workers' Compensation and Employers' Liability.**

Workers' Compensation Insurance shall be provided in accordance with the requirements of the laws of this State and shall include an endorsement to extend coverage to any State, which may be interpreted to have legal jurisdiction. Employers' Liability Insurance shall also be provided in an amount acceptable to the Authority.

(c) **Professional Liability Insurance.**

The Vendor shall carry Errors and Omissions and/or Professional Liability Insurance sufficient to protect the Vendor from any liability arising out of professional obligations performed pursuant to this Contract. The insurance shall be in the amount of $1,000,000 each claim and in such policy form as shall be approved by the Authority.

Professional Liability Insurance shall include coverage for Contingent Bodily Injury and Property Damage.

(d) Cyber Security Insurance.

The Vendor shall carry Cyber Security Insurance in the amount of $5,000,000 each claim which shall include coverage for breach of the Privacy Act or HIPAA regulations. This coverage will be either a part of or separate from the Professional Liability Insurance.

The General Liability, Professional Liability and Cyber Security policies are to be written on a claims-made or occurrence basis. If coverage is written on a claims-made basis; the Vendor shall maintain continuous claims-made coverage for the life of the contract and any extensions thereto and for a period of two (2) years beyond the expiration of the contract. If continuous claims-made coverage is not maintained, Tail Coverage shall be purchased to cover claims received up to two (2) years beyond the expiration of the contract.

A $5,000,000 occurrence limit for General Liability, Professional Liability and Cyber Security shall be maintained at all times throughout the term of the Contract and any extensions thereto. Such coverage may be obtained in combination with Umbrella Insurance which shall provide excess coverages for the General Liability, Professional Liability, and Cyber Security Insurances.

(e) **Automobile Liability Insurance.**

The Consultant Firm shall carry Commercial Automobile Liability insurance, at all times. The policy shall cover any owned, hired or non-owned automobiles / vehicles used by the insured or its staff with minimum limits for liability for bodily injury and property damage shall not be less than $1 million per occurrence as a combined single limit.

Limits indicated above may be provided through a combination of underlying and excess policies as needed.

ACORD Certificates of Insurance acceptable to the Authority in respect to each of the aforementioned policies shall be filed with the Authority prior to commencement of Work. All policies and corresponding certificates must show thirty (30) days prior written notice of cancellation (10 days' notice for non-payment cancellation) to the Authority. If the insurance policies cannot be endorsed to provide notice of cancellation to third parties, then it is the responsibility of the Vendor to provide notice of cancellation to the Authority within forty-eight (48) hours of receipt of notification from their insurance company.

8. **Termination.** The Authority shall have the right without cause and in its complete discretion to terminate the Contract at any time upon seven (7) days' advance written notice to the Vendor. In such event, absent a default on the part of the Vendor, the Vendor shall be entitled to compensation for all services properly provided to the Authority pursuant to the Contract prior to such termination.

In addition to other remedies available under law to the non-defaulting party, this Contract may be terminated by either party upon thirty (30) days advance written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.

9. **Confidential Information of the Authority.** In connection with performing the Work, the Vendor, its employees and subcontractors may receive, review and become aware of proprietary, personnel,

commercial, and financial information of the Authority, its employees, members, borrowers or business associates that is confidential and/or proprietary in nature ("Confidential Information"). The Vendor agrees that the use and handling of Confidential Information by the Vendor, its employees and subcontractors, shall be done in a responsible manner and solely for furtherance of the Work. Other than to its employees and subcontractors who have a need to know Confidential Information in connection with performance of the Work, the Vendor agrees not to disclose any Confidential Information, without the prior written consent of the Authority. The Vendor shall be responsible to assure that its employees and subcontractors do not disclose any Confidential Information without the prior written consent of the Authority. The Vendor shall inform each of its employees and subcontractors that receives any Confidential Information of the requirements of this Section 9 of the Contract and shall require each such employees and subcontractors to comply with such requirements.

Notwithstanding the foregoing, the term Confidential Information shall not include information which: (I) is already known to the Vendor, its employees, and subcontractors from sources other than the Authority; (ii) is or becomes generally available to the public other than as a result of a disclosure by the Vendor, its employees and subcontractors; or (iii) is required to be disclosed by law or by regulatory or judicial process. The Vendor, its employees and subcontractors may be required to execute a Non-Disclosure Confidentiality Agreement, as may be deemed be appropriate by the Authority, in its sole discretion.

Pursuant to *Section 6 Indemnification* of the Contract, the Vendor shall indemnify and hold the Authority, its employees, and members harmless for any breach of *Section 9* "Confidential Information of the Authority", by the Vendor, its employees, or subcontractors.

10. **Debarment Liability.** The Vendor acknowledges that it shall be rendered liable to debarment in the public interest, pursuant to procedures established by Executive Order No. 34 (1976), and updated by Executive Order No. 189 (1988), and pursuant to N.J.A.C. 19:30-2, for violating any of the following provisions:

a. No Vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any Authority officer or employee or special Authority officer or employee, as defined by N.J.S.A. 52:13D-13(b) and (e), with which such Vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13(i), of any such officer or employee, or any partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13(g).

b. The solicitation of any fee, commission, compensation, gift, gratuity, or other thing of value by any Authority officer or employee or special Authority officer or employee from any Authority Vendor shall be reported in writing forthwith by the Vendor to the Attorney General of New Jersey and the Executive Commission on Ethical Standards.

c. No Vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such Vendor to, any Authority officer or employee or special Authority officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to the Authority, or with any person, firm or entity with which he or she is employed or associated or in which he or she has an interest within the meaning of N.J.S.A. 52:13D-13(g). Any relationships subject to this subsection shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the Authority officer or employee or special Authority officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

d. No Vendor shall influence, or attempt to influence or cause to be influenced, any Authority officer or employee or special Authority officer or employee in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.

e. No Vendor shall cause or influence, or attempt to cause or influence, any Authority officer or employee or special Authority officer or employee to use, or attempt to use, his or her official position to secure unwarranted privileges or advantages for the Vendor or any other person.

11. **<u>Time for Completion and Damages.</u>** The time for beginning and the time for completion of the Work are essential conditions of the Contract, and the Work embraced shall be commenced on the date of the "Notice to Proceed".

The Vendor shall proceed with the Work at such rate of progress to insure full completion as set forth in the *RFQ/P* and the Vendor's Proposal.

For reasons within the Vendor's control, if the Vendor shall fail to complete the Work, or shall be responsible for a delay which results in the failure to complete the Work within the time specified, or extension of time granted by the Authority, then the Vendor will pay the Authority an amount sufficient to compensate the Authority for its damages incurred as a result of such failure to complete.

12. **Contractual Liability Act.** Notwithstanding any provision in this Contract or in the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., to the contrary, the parties hereto agree that any and all claims made by the Vendor against the State of New Jersey and/or the Authority for damages, including, but not limited to costs and expenses, shall be governed by and subject to the provisions of the New Jersey Contractual Liability Act.

13. **Political Campaign Contributions.**

13.1 For the purpose of this Section 13, the following shall be defined as follows:

a) "Contribution" - means a contribution reportable by a recipient under "The New Jersey Campaign Contributions and Expenditures Reporting Act" P.L. 1973, c. 83 (C.10:44A-1 et seq.), and implementing regulations set forth at N.J.A.C. 19:25-7 and N.J.A.C. 19:25-10.1 et seq. Currently, contributions in excess of $300 during a reporting period are deemed "reportable" under these laws.

b) "Business Entity" - means any natural or legal person, business corporation, professional services corporation, limited liability company, partnership, limited partnership, business trust, association or any other legal commercial entity organized under the laws of New Jersey or any other state or foreign jurisdiction. It also includes (i) all principals who own or control more than 10 percent of the profits or assets of a business entity or 10 percent of the stock in the case of a business entity that is a corporation for profit, as appropriate; (ii) any subsidiaries directly or indirectly controlled by the business entity; (iii) any political organization organized under 26 U.S.C.A. 527 that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and (iv) if a business entity is a natural person, that person=s spouse or child, residing in the same household.

c) P.L. 2005, c. 51 – means Public Law 2005, chapter 51 (C. 19:44A-20.13 through C. 19:44A-20.25, inclusive).

13.2 The terms, restrictions, requirements, and prohibitions set forth in P.L. 2005, c. 51 are incorporated into this Agreement by reference as material terms of this Agreement with the same force and effect as if P.L. 2005, c. 51 were stated herein its entirety. Compliance with P.L. 2005, c. 51 by Vendor shall be a material term of this Agreement.

13.3 Vendor hereby certifies to the Authority that commencing on and after October 15, 2004, Vendor (and each of its principals, subsidiaries and political organizations included within the definition of Business Entity) has not solicited or made any Contribution of money, pledge of Contribution, including in-kind Contributions, that would bar a contract agreement between Vendor and the Authority pursuant to P.L. 2005, c. 51. Vendor hereby further certifies to the Authority that any and all certifications and disclosures delivered to the Authority by Vendor (and each of its principals, subsidiaries and political organizations included within the definition of Business Entity) are accurate, complete and reliable. The certifications made herein are intended to and shall be a material term of this Agreement and if the Treasurer of the State of New Jersey determines that any Contribution has been made in violation of P.L. 2005, c. 51, the Authority shall have the right to declare this Agreement to be in default.

13.4 Vendor hereby covenants that Vendor (and each of its principals, subsidiaries and political organizations included within the definition of Business Entity) shall not knowingly solicit or make any contributions of money, or pledge of a contribution, including in-kind contributions, to a candidate committee or election fund of any candidate or holder of the public office of Governor of New Jersey or to any New Jersey state or county political party committee prior to the expiration or earlier termination of this Agreement. The provisions of this Paragraph 13.4 are intended to and shall be a material term of this Agreement and if the Treasurer of the State of New Jersey determines that any Contribution has been made by Vendor (and each of its principals, subsidiaries and political organizations included within the definition of Business Entity) in violation of P.L. 2005, c. 51, the Authority shall have the right to declare this Agreement to be in default.

13.5 In addition to any other Event of Default specified in the Contract Documents, the Authority shall have the right to declare an event of default under this Agreement if: (i) Vendor (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) makes or solicits a Contribution in violation of P.L. 2005, c. 51, (ii) Vendor (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) knowingly conceals or misrepresents a Contribution given or received; (iii) Vendor (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) makes or solicits Contributions through intermediaries for the purpose of concealing or misrepresenting the source of the Contribution; (iv) Vendor (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) makes or solicits any Contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or to any State or county party committee; (v) Vendor (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) engages or employs a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any Contribution, which if made or solicited by Vendor (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) directly would violate the restrictions of P.L. 2005, c. 51; (vi) Vendor (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) funds Contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) Vendor (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) engages in any exchange of Contributions to circumvent the intent of P.L. 2005, c. 51; (viii) Vendor (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) directly or indirectly through or by any other person or means, does any act which would violate the restrictions of P.L. 2005, c. 51; or (ix) any material misrepresentation exists in any Political Campaign Contribution Certification and Disclosure which was delivered by Vendor to the Authority in connection with this Agreement.

13.6 Vendor hereby acknowledges and agrees that pursuant to P.L. 2005, c. 51, Vendor shall have a continuing obligation to report to the Office of the State Treasurer, Political Campaign Contribution Review Unit of any Contributions it makes during the term of this Agreement. If after the effective date of this Agreement and before the entire Contract Price is paid by the Authority, any Contribution is made by Vendor and the Treasurer of the State of New Jersey determines such Contribution to be a conflict of interest in violation of P.L. 2005, c. 51, the Authority shall have the right to declare this Agreement to be in default.

14. <u>General Conditions.</u>

A. The Work shall be performed in a professional manner, in accordance with the standards generally expected or required within the profession and the Work shall also be performed in accordance with all applicable state, federal and local laws, rules, regulations, and ordinances.

B. The Vendor shall provide such reports, certificates, and documents as the Authority may reasonably require.

C. The Vendor shall provide to the Authority, at Vendor's expense, copies of all reports, schedules, charts, graphs, and/or other documents required.

D. If the Authority or Vendor observes or otherwise becomes aware of any fault or defect in the Project or nonconformance with any of the Contract Documents, prompt written notice thereof shall be given by the party discovering the defect to the other.

E. The Authority shall furnish all information available to the Authority, and reasonably required for the performance of the Work and shall render approvals and decisions as expeditiously as possible for the orderly progress of the Vendor's services and of the Work.

F. The Vendor shall comply with the affirmative action requirements set forth in the Law Against Discrimination, N.J.S.A. 10:5-31 et seq., and the regulations promulgated thereunder by the State Department of Treasury.

G. The Vendor is required to comply with the requirements of N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27 et seq., which are expressly included within the terms of this Contract.

The Vendor agrees that:

a. In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;

b. No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;

c. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of $ 50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and

d. This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.

H. In accordance with Public Law 2004, Chapter 57, a subcontractor shall provide a copy of its business registration to any Vendor who shall forward it to the Authority. No contract with a subconsultant shall be entered into by any Vendor unless the subconsultant first provides proof of valid business registrations. The Vendor shall provide written notice to all subconsultants that they are required to submit a copy of their business registration to the Vendor. The Vendor shall maintain a list of the names of any subconsultants and their current addresses, updated as necessary during the course of the contract performance. The Vendor shall submit to the Authority a copy of the list of subconsultants, updated as necessary during the course of performance of the contract. The Vendor shall submit a complete and accurate list of the subconsultants to the Authority before a request for final payment is made to the Authority. The Vendor and any subconsultant providing goods or performing services under this contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the "Sales and Use Tax Act", P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) on all their sales of tangible personal property delivered into the State.

I. In accordance with the requirements of N.J.S.A. 52:32-17 et seq. N.J.A.C. 17:13-1.2 et seq., and N.J.A.C. 17:14-1.2 et seq., as amended, the Authority is required to develop a set-aside plan for Small Businesses. The Vendor agrees that, if awarded a contract based on this plan, it shall comply with all requirements of these provisions. If the Vendor fails to comply with the requirements of these provisions, the Authority may declare this Contract void.

J. Pursuant to N.J.S.A. 52:34-13.2, all Work and all subcontractor services performed in connection with or as part of the Work shall be performed within the United States.

K. Pursuant to N.J.S.A. 52:15C-14(d), relevant records of private vendors or other persons entering into contracts with the Authority are subject to audit or review by the New Jersey Office of the State Comptroller. Therefore, the Vendor shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

The Vendor shall not disclose to any third party the contents of the information, reports, findings, analysis, surveys, drawings and creative elements generated or produced in performance of this Contract, or provide copies of same, without the prior written consent of the Authority, except where such information, reports, etc. are legally required by order of court or administrative agency, state or federal.

L. The Authority and the Vendor, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party of this Contract and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Contract. Neither the Authority nor the Vendor shall assign, sublet, or transfer any interest in this Contract without the prior written consent of the other party.

M. Any notices required to be given under this Contract shall be mailed to:

New Jersey Economic Development Authority
P.O. Box 990
Trenton, New Jersey 08625-0990
Attn: Designated Contract Manager
AND
Vendor Name

N. To the extent that there is any conflict between the terms and conditions of the Vendor's Proposal and the terms and conditions of the Contract and the Authority's RFQ/P, the Contract and RFQ/P shall control.

O. This Contract shall be construed under the laws of the State of New Jersey.

P. The headings of the various paragraphs of this Contract are inserted for the convenience of reference only, and in no way, define, describe or limit the scope or intent of this Contract or any of the provisions hereof, and shall not affect the interpretation of this Contract or any of the provisions hereof.

Q. This Contract shall be construed without any presumptions against the drafter and shall be considered as though it were drafted cooperatively by both parties.

R. In the event that any portion of this Contract is found to be contrary to law and unenforceable; the validity of remaining covenants, agreements, terms and provisions contained in this Contract, shall be in no way affected, prejudiced or disturbed thereby.

S. This Contract constitutes the entire agreement between the parties. Any changes or amendments to the Contract must be in writing and signed by the Vendor and an authorized representative of the Authority.

T. The parties hereto represent that they have the proper authority to sign on behalf of the entities entering this Contract and they fully intend for the Authority and Vendor to be legally bound.

U. Pursuant to N.J.S.A. 54:49-19, and notwithstanding the provision of another law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of state government, is entitled to payment for those good or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any state tax, the Director of the Division of Taxation shall seek to set off so much of that payment as shall be necessary to satisfy the indebtedness. The amount set-off shall not allow for the deduction of any expense or other deduction which might be attributable to the taxpayer partner or shareholder subjection of set-off under this Act. The Director of the Division of Taxation shall give notice of the set-off to the taxpayer, partner or shareholder and provide an opportunity for a hearing within (30) days of such notice under the procedures for protests established under N.J.S.A. 54:49-19. No request for conference, protest or subsequent appeal to the Tax Court from any protest shall stay the collection of the indebtedness.

15. <u>Performance Guarantee/Warranties of Contractor</u>

A. Commercial Off the Shelf Software

1. Contractor warrants that a product licensed to the Authority shall operate in all material respects as described in the Solicitation and/or Contractor technical documentation for ninety (90) days after Acceptance. The Authority shall notify Contractor of any product deficiency within ninety (90) days after Acceptance.

2. Except for the portion of Contractor's COTS product that intentionally contains one or more of the following for the purpose of anti-virus protection, Contractor warrants that, at the time of delivery and installation of the Software provided pursuant to the contract, its product shall be free of what are commonly defined as viruses, backdoors, worms, spyware, malware and other malicious code that will hamper performance of the Software, collect unlawful personally, identifiable information on users, or prevent the Software from performing as required under the contract.
3. In the event of any breach of this warranty, the Contractor shall correct the product errors that caused the breach of warranty, or if Contractor cannot substantially correct such breach in a commercially reasonable manner, the Authority may end its usage and recover the fees paid to Contractor for the license and any unused, prepaid technical support fees paid. Under no circumstances does this warranty provision limit the Contractor's obligation in the event of a breach of confidentiality.
4. Contractor does not warrant that Software is error-free or that it will operate uninterrupted.

B. Custom Software

1. Contractor warrants that Software Deliverables shall operate in all material respects as described in the applicable specification documentation for one hundred and eighty (180) days after Acceptance. The Authority shall notify Contractor of any Software deficiency within one hundred and eighty (180) days after Acceptance of the Software Deliverable.
2. Contractor warrants that, at the time of Acceptance of the Software Deliverable provided pursuant to the contract, its product shall be free of what are commonly defined as viruses, backdoors, worms, spyware, malware and other malicious code that will hamper performance of the Software, collect unlawful personally identifiable information on users, or prevent the Software from performing as required under the contract. Under no circumstances does this warranty provision limit the Contractor's obligation in the event of a breach of confidentiality.
3. In the event of any breach of this warranty, Contractor shall correct the Software errors that caused the breach of warranty, or if Contractor cannot substantially correct such breach in a

commercially reasonable manner, the Authority may recover a portion of the fees paid to Contractor for the Software Deliverable to reflect any reduction in the value of the Software Deliverable as a result of the uncorrected defect. Under no circumstances does this warranty provision limit the Contractor's obligations in the event of a breach of confidentiality.

4. Contractor does not warrant that Software is error-free or that it will operate uninterrupted.

C. IT Services

1. Contractor warrants that all Services will be provided in a professional manner consistent with industry standards. The Authority shall notify Contractor of any Services warranty deficiencies within ninety (90) days from performance of the deficient Services.
2. In the event of any breach of this warranty, the Contractor shall re-perform the deficient Services, or if Contractor cannot substantially correct a breach in a commercially reasonable manner, the Authority may end the relevant Services and recover the fees paid to Contractor for the deficient Services.

D. Hardware

1. Contractor warrants that the equipment offered is standard new equipment, and is the manufacturer's latest model in production, with parts regularly used for the type of equipment offered; that such parts are all in production and not likely to be discontinued; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice.
2. Contractor warrants that all equipment supplied to the Authority and operated by electrical current is UL listed where applicable.
3. Contractor warrants that all new machines are to be guaranteed as fully operational for one year from time of Acceptance by the Authority. For the avoidance of doubt, Acceptance with respect to Hardware shall occur no later than sixty (60) days after delivery, as evidenced by a signed delivery receipt. The Contractor shall render prompt service without charge, regardless of geographic location.
4. Contractor warrants that sufficient quantities of parts necessary for proper service to

equipment shall be maintained at distribution points and service headquarters.

5. Contractor warrants that trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within a 48-hour period or within the time accepted as industry practice.
6. Contractor warrants that all Software included with the Hardware shall perform substantially in accordance with specifications, for one year from the time of Acceptance. Contractor warrants that Software media will be free from material defects in materials and workmanship for a period of one year from the date of Acceptance.
7. In the event of any breach of this warranty, Contractor shall promptly repair, replace or refund the purchase price of product rejected for failure to conform with Contractor's product specifications.

E. Warranties

THE WARRANTIES SET FORTH HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, AND CONTRACTOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

This Contract for Professional Services – Creation & Maintenance of a New Jersey Asset Management Data System is entered into as of the day and year first written above.

ATTEST:

By: ______________________

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Melissa Orsen
Chief Executive Officer

ATTEST:

By: ______________________

(VENDOR NAME)

By: ______________________

Name:
Title:

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

IPM PROCURMENT - FEE SCHEDULE PRICING SCORE EVALUATION SUMMARY

RFQ/P / BID #:	2017-RFQ/P-077 RE-BID (7/11/17)
TITLE:	Creation & Maintenance of a NJ Asset Management Data System
REQUESTOR:	Erin Gold, Director - Governance & Communications

AWARD CRITERIA: SECTIONS 1A-1C the TOTAL Cost submitted will be used for evaluation purposes. SECTIONS 1D-1E, each Bidders TOTAL COST for the INITIAL TWO (2) Year Contract will be used to evaluate Price for these sections. Cost increases for each extension year will not be included in the TOTAL COST because there is no guarantee this will be funded beyond the initial contract term.
SCORING: TOTAL COST FOR SECTIONS 1A-1E will be ranked from lowest TOTAL cost = (Score of 5) to the highest TOTAL cost = (Score of 1). Scores between the lowest and highest TOTAL cost will be given a (Score of 3). In the event of a tie TOTAL Lowest Score, the Hourly Rate TOTAL will be used to break the tie.

SECTION 1A - 1C: PHASES I, II, III		ELSEIVER		NJ TECH VENTURES, LLC	
SECTION	ITEM DESCRIPTION		COST		COST
1A	*PHASE I - DEVELOPMENT*		$ 80,000.00		$ 275,000.00
1B	*PHASE II - IMPLEMENTATION*		$ 605,000.00		$ 375,000.00
1C	*PHASE III - LAUNCH*		$ 35,000.00		$ 50,000.00
TOTAL COST FOR 1A - 1C			$ 720,000.00		$ 700,000.00

SECTION 1D - 1E: Phase IV & On-Going Monthly/Annual Costs		ELSEIVER MONTHLY & USER COSTS	ELSEIVER COST FOR INITIAL TWO (2) YEAR CONTRACT	ELSEIVER COST FOR 1ST YEAR OF CONTRACT EXTENSION	ELSEIVER COST FOR 2ND YEAR OF CONTRACT EXTENSION	ELSEIVER COST FOR 3RD YEAR OF CONTRACT EXTENSION	NJ TECH MONTHLY & USER COSTS	NJ TECH COST FOR INITIAL TWO (2) YEAR CONTRACT	NJ TECH COST FOR 1ST YEAR OF CONTRACT EXTENSION	NJ TECH COST FOR 2ND YEAR OF CONTRACT EXTENSION	NJ TECH COST FOR 3RD YEAR OF CONTRACT EXTENSION
ID	*PHASE IV - ON-GOING PERFORMANCE MONITORING/SECURITY/SUPPOT*	$3333.33/mo x 24 months	$80,000	$ 40,000 /mo	$ 40,000 /mo	$ 40,000 /mo	$16,250/mo x 18 months	$292,500.00	$ 16,250.00 /mo	$ 16,250.00 /mo	$ 16,250.00 /mo
1E	*COST PER USER SUBSCRIPTION PROFILE - ANNUAL FLAT FEE (12 MO) and Total Cost, est. 5,000 subscribers*	$ 70.00 /user x 5,000 est. users = $350,000/yr	$700,000.00	$ 70.00 /yr	$ 70.00 /yr	$ 70.00 /yr	$ 75.00 /user x 5,000 est. users = $375,000/yr	$750,000.00	$75.00	$75.00	$75.00
TOTAL COST - 1D & 1E			$780,000.00					$1,042,500.00			

	ELSEIVER		NJ TECH VENTURES, LLC	
TOTAL COST - 1A - 1E	$ 1,500,000.00	NOTE: CLARIFIED SECTION 1D COSTS WITH VENDOR. VERIFIED MONTHLY COST AND TOTAL TWO (2) YR CONTRACT COST IN RED BELOW.	$ 1,742,500.00	NOTE: CLARIFIED SECTION 1D COSTS WITH VENDOR. VERIFIED MONTHLY COST AND TOTAL TWO (2) YR CONTRACT COST IN RED BELOW.
SCORE PER AWARD CRITERIA	5		1	

SECTION 2: HOURLY RATE'S FOR RELATED SERVICES OUTSIDE THE SCOPE OF WORK (i.e. SOFTWARE UPGRADES, ETC.)		ELSEIVER	NJ TECH VENTURES, LLC
POSITION/TITLE		HOURLY RATE	HOURLY RATE
2A	*SENIOR EXECUTIVE/MANAGER*	$0.00	*$225.00*
2B	*MID-LEVEL EXECUTIVE MANAGER*	$0.00	*$175.00*
2C	*LOW-LEVEL EXECUTIVE MANAGER*	*$180.00*	*$125.00*
2D	*ADMIN/SUPPORT STAFF*	$0.00	*$75.00*
TOTAL - NUMBER OF POSITIONS & COST 2A-2D		*$180.00*	*$600.00*
NOTES:		Vendor filled in $0.00 dollars on Fee Schedule for 2A, 2B & 2D, as required. *Submitted Annex 1 to Fee Schedule clarifying Annual Subcription Costs. Obtained clarification.	Suspect they provided pricing for 1 year, rather than 2 years, based on extension costs for Section 1D. Obtained clarification

EXECUTIVE SESSION: CONFIDENTIAL INFORMATIONAL MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: September 12, 2019

SUBJECT: Information Update – Offshore wind (OSW) port feasibility study expanded to include a second site, Hope Creek

Summary

The information contained in this Memorandum is provided for information purposes.

Authority staff acting under delegated authority has issued a contract amendment to NJEDA-2018-GSA-RFQ080 with McKinsey and Company, Inc. Washington D.C. (McKinsey) to expand a feasibility study that is currently underway to include a second site located in Hancocks Bridge and owned by PSEG ("Hope Creek site").1 The Attorney General's office has advised that this expansion may be accomplished under delegated authority

This followed the receipt of confidential – and previously unavailable – information on the site's readiness, and willingness of the site's owner to explore potential development.

Inclusion of Hope Creek, alongside South Amboy will result in an additional cost of $240,380.94 and will extend the delivery timeframe for a final report (encompassing both South Amboy and Hope Creek) by four weeks to October 25th.[2]

Authority staff is currently in advanced conversations with PSEG, as the site owner, to cover the cost of the expanded study ($240,380). Alongside the Governor's and Attorney General's offices, Staff is working with PSEG to resolve the funding mechanism and terms.

To avoid delays, which risk the State losing significant OSW-related investment to other, rapidly mobilizing, northeastern states, the Authority has taken the decision to proceed in commissioning the expanded study ahead of formalizing a funding agreement with PSEG.

1 The study expansion represents the third amendment to NJEDA-2018-GSA-RFQ080
2 The feasibility assessment of South Amboy incurred a cost of $365,987.84

DRAFT, CONFIDENTIAL & PRE-DECISIONAL

This update is being provided in Executive Session to preserve New Jersey's economic interest in the face of robust interstate competition for offshore wind (OSW) investment, as well as commercial considerations relating to potential land future purchases by the State.

1 Overview

Based on significant evidence of the strategic need, and conscious of the need to mobilize quickly to maximize economic benefits for the State, the Authority recently commissioned an economic and financial feasibility assessment of a potential OSW port at South Amboy – this was approved by the Board at its July 16th meeting (the Board Memorandum is enclosed at *Exhibit A-6*).

The Authority since received reliable – and previously unavailable – information regarding the development potential of a second site, the Hope Creek site in Hancocks Bridge, New Jersey – with this information provided on a confidential basis by the site's owner, PSEG.

While, Hope Creek was identified by the NJBPU's Statewide Port assessment as a site with development potential – with NJBPU noting it is one of only two New Jersey sites (the other being South Amboy) free of vertical restrictions. However, as described below, this site was originally deprioritized due to the fact that it is located within a restricted area adjacent to the Hope Creek Nuclear Generation Plant. PSEG's interest and openness to develop the site was previously unavailable as it formed part of the Orsted led and PSEG supported "Ocean Wind" bid proposal to the New NJ Board of Public Utilities' (NJBPU) for the State's first (1,100MW) OSW solicitation. Orsted was ultimately successful in the solicitation, however the final proposal agreed to by NJBPU did not include a port development, for reasons discussed below. Site owner, PSEG, remains interested in a potential port and reached out directly to the NJEDA to explore options for site development. Furthermore, several Original Equipment Manufacturers (OEMs) have now expressed interest in site availability.

Given new information, the Authority is expanding the feasibility study to include an assessment of the Hope Creek site. This would allow a like-for-like comparison of the two sites (South Amboy and Hope Creek), in-turn, helping to inform a decision by the State on how best to direct any future State capital and/or to attract private investment, which could potentially include both sites, depending on feasibility study findings.

Staff issued McKinsey with a request for a proposal to expand the current study to include a second site – with the scope of works otherwise unchanged. McKinsey's proposal was considered as offering value for money; with the cost of appraising a second site discounted by 35 per cent relative to the cost of appraising South Amboy. The ability to retain the same project team and apply a common appraisal methodology across both sites were further key factors in the Authority's decision. It was recognized that this consistency of approach and economies of scale would not be achievable with a separate provider. The Attorney General's office has advised that this expansion may be accomplished under delegated authority

2 About the Hope Creek site

PSEG has stated its interest in the potential development of the site as an OSW marshalling port and is open to working with the State to assess economic and financial benefits of a development. PSEG has also shared confidential information on the site and its readiness as a potential port.

As stated above, this information was previously unavailable to the Authority as it formed part of the Orsted led and PSEG supported “Ocean Wind” bid proposal to the New NJ Board of Public Utilities’ (NJBPU) for the State’s first (1,100MW) solicitation. While Orsted was successful in the solicitation, the final project proposal that NJBPU agreed to did not include a port development. The NJBPU indicated that it was not appropriate for them to bundle the development cost of a privately-owned infrastructure asset that could be utilized by multiple rounds of projects into the OREC for a single project. PSEG, as the site owner, remains interested in a potential marshaling port at the site – and the NJBPU recommended that they now engage with the NJEDA to discuss the possibilities of the site being a complement or alternative to the South Amboy project.

As outlined in Figure 1 below, the site is proximate to an existing PSEG Nuclear site located 7 ½ miles southwest of Salem, on the eastern shores of the Delaware River. North of the site is the continuation of Artificial Island, owned by the US Army Corp of Engineers (USACE). To the east are wetlands, while to the south is the Hopes Creek Nuclear Generating Station. Water approaches to the site are via the Baker Range and Liston Range, which is 800 feet wide and has a Mean Lower Low Water (MLLW) depth of 40 feet (which is sufficient to accommodate most marshalling uses).

Figure 1 – Hope Creek site

Source: PSEG-Orsted, 2019 (Confidential)

The site can be conceptually distinguished into two parts:

- an initial (circa 30 acre) site for which initial environmental assessments have been undertaken (illustrated as available for construction in Figure 1 above);
- a larger (circa 90-acre) site along the coastline to the north of the construction ready section for which environmental conditions are less known. The larger site is subject to an ongoing negotiation between PSEG and USACE regarding a potential land exchange – with the

exchange expected to be completed in the next 9 to 12 months, after which permitting would occur.

Further detail is provided in *Exhibit A-1* and *Exhibit A-2*.

3 Why Hope Creek justifies examination

NJEDA Staff believes this new information justifies expanding the feasibility study that is currently underway to include Hope Creek Expansion of the study would allow a like-for-like comparison of economic and financial viability of the two sites and, in turn, helping to inform a decision by the State on how best to direct any future state and private investment. In addition, there are several attributes of the site that support extending the feasibility assessment:

- **Availability: Site readiness:** Significant preparatory work and financial investment has been undertaken on the 30-acre portion of the site, which includes an Environmental Impact Statement (EIS), preparation of an overall site plan and initial assessment of necessary improvements and dredging requirements. Additionally, PSEG has identified permitting requirements at a federal, state and local level. Should development be feasible, this preparatory work would be a significant competitive advantage for the State in terms of its capacity to mobilize ahead of other states in developing fit-for-purpose assets and attracting high-value parts of the OSW supply chain. Based on this, we would expect a marshalling port to be operational more quickly than at the South Amboy site.

- **Scalability: Capacity to support large-scale manufacturing:** The site's potential to be expanded beyond an initial 30 acres to 120 acres permits a scenario where it could support large-scale OSW manufacturing activities – with the largest components (e.g. Jacket Foundations) typically requiring sites of up to 100 acres. NJEDA and the State are in active conversations with numerous major OSW OEMs who are actively looking for large sites on the East Coast. Based on initial analysis, the scalability of Hope Creek, if timed to follow the development of the initial 30 acres marshalling port, could be a major competitive advantage in attracting OEMs and in creating additional economic value for the State.

- **Potential to partner with a single and sophisticated landowner:** The single-owner nature of the Hope Creek site (at the degree of scale that it offers) is a further key strength. Additionally, PSEG's deep experience in site preparation and project permitting would likely allow it to mobilize quickly should a development be deemed viable.

- **Accessibility: Absence of major limitations:** As with South Amboy, Hope Creek does not have vertical restrictions – which permits a greater range of marshaling activities (e.g. monopile and foundation assembly, which require greater clearance heights). The property is infill land and there are confined disposal facilities (CDFs) nearby, making development significantly easier and more cost-effective. It is also far enough from residential areas to expect no major concerns from residents.

- **Local economic benefits:** The site is located in Salem County, which is one of the poorest counties in the state with well above average poverty and unemployment rates, particularly for families of color. Locating the port in this county could provide significant economic stimulus to the area.

4 Funding & execution

The Attorney General's office advised Authority Staff that a wider request for proposals was not required in order to expand the current study to include Hope Creek, given the scope of an expanded study is sufficiently similar to the previously approved amendment for South Amboy.

To this end, on August 14^{th}, the Authority issued McKinsey a request for a proposal (enclosed at *Exhibit A-3)*, including a request for a total firm-fixed price in accordance with their original cost schedule and a completion timeframe. McKinsey's response (enclosed in *Exhibit A-4*) was received on August 16^{th}, proposing a total firm-fixed price of $240,380.94, and committing to delivery of a final report (encompassing both South Amboy and Hope Creek) by October 25^{th} – representing a four (4) extension on the ten (10) week timeframe agreed for South Amboy.

After careful review, Authority staff determined McKinsey's proposal to be value for money – representing a 35 per cent discount relative to the cost of appraising the South Amboy site. The ability to retain the same project team and apply a common appraisal methodology across both sites were further key factors in the Authority's decision.

Working closely with the Governor's and Attorney General's offices, Authority Staff is in advanced discussion with PSEG about funding the study expansion – and is in the process of determining an appropriate funding mechanism and resolving funding terms.

To avoid delays, which risk the State losing significant OSW-related investment to other, rapidly mobilizing, northeastern states, the Authority has taken the decision to proceed in commissioning the expanded study ahead of formalizing a funding agreement.

The expanded study is the third amendment to NJEDA-2018-GSA-RFQ080 with McKinsey.

EXHIBIT A-1: Hope Creek site

This image shows the boundaries of the Hope Creek site based on information shared with the Authority by PSEG-Orsted. The site can be conceptually distinguished into two components, an initial (circa 30 acre) site for which an environmental assessment has been undertaken, as well as a larger site for which environmental conditions are less known. The larger site is subject to an ongoing negotiation between PSEG and USACE regarding a land exchange.

Source: Adapted from PSEG information

EXHIBIT A-2: PSEG-Orsted proposed port facility

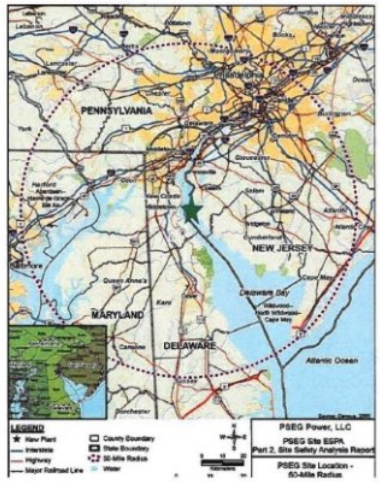
The following information was shared with the Authority on a confidential basis by PSEG.

CONFIDENTIAL

Hope Creek Port Facility

Located on the existing PSEG Nuclear Site (Salem and Hope Creek Generating Stations) in Hancocks Bridge, NJ

- 30 miles southwest of Philadelphia, PA
- 18 miles south of Wilmington, DE
- 7-1/2 miles southwest of Salem, NJ
- Easy access to the open ocean
- No bridges between the port and the ocean



CONFIDENTIAL

Hope Creek Port Facility

Site studied as part of the PSEG nuclear development effort

- NRC issued an Environmental Impact Statement for a new nuclear plant
- Studies included:
  - 4 seasons of terrestrial and avian species
  - Aquatic and benthic species
  - Geology and hydrology
- Location is made up of former dredge spoils
- Soil quality is poor and vegetation is a monoculture of *Phragmites*

Salem / Hope Creek Site

DRAFT, CONFIDENTIAL & PRE-DECISIONAL

CONFIDENTIAL

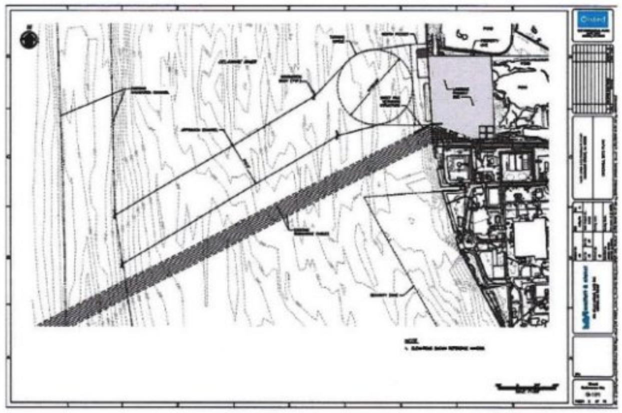
Overall Site Plan

Wharf
- Two (2) Berths
- Pile supported wharf – 1280' long
- 3 breasting dolphins
- Fenders on berthing face

Access Channel
- Approach Channel
- Turning Basin

Upland Areas
- Upland areas Dense Graded Aggregate (DGA) surface cover.
- High Mast Lights
- Storm water Drainage

New Onsite Facilities
- Administration Building
- Warehouse Building
- Parking



CONFIDENTIAL

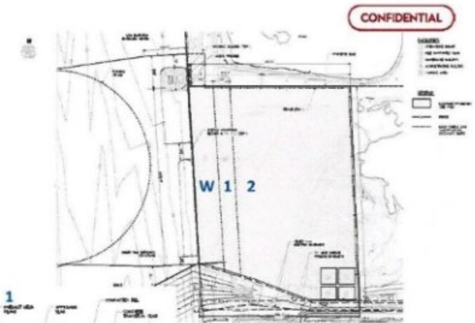
Site Improvements

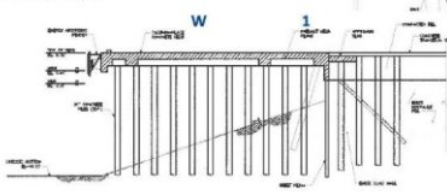
Civil work required to improve soil load bearing capacity

Surcharge of soil and piles to support the wharf

Pile supported wharf (W) and area 1 are rated to 4,000 psf

Area 2 rated to 2,000 psf





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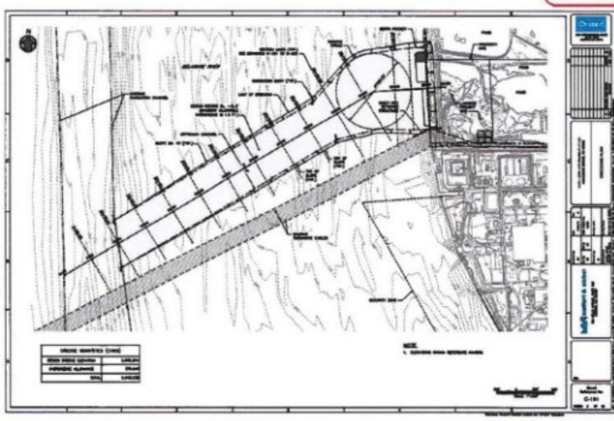
Access Channel

- +/- 3 million CY dredge required
- Dredge spoils pumped to existing CDF



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Major Permitting Requirements

- NJDEP Permitting
  - Land Use - Port development (CAFRA, WFD, FHA, wetland)
  - WQC - Operation of the Artificial Island CDF by PSEG Nuclear
  - Dredging - Navigation channel/turning basin/berthing pocket
- US Army Corps of Engineers
  - Section 10/404 – Dredging and impacts to regulated resources
  - Section 408 – Connection to federal navigation channel
- Regional/Local
  - Delaware River Basin Commission – Dredging
  - Lower Alloways Creek Township – Municipal Land Use Code compliance/Building permits

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Key Permitting Considerations

- Permitting – Aggressive permitting schedule required due to site specific construction requirements (surcharge, pile supported quay, dredging)
- Schedule – Anticipated 2 year permitting time line includes significant community and regulatory outreach/coordination
- USACE/PSEG Land Exchange – Process started in 2008 would result in transfer of Artificial Island CDF Cell No.3 to PSEG Nuclear. Allows for access to surcharge material and upland disposal of dredge material
- Silver Run Transmission Cable – PSEG Nuclear/Silver Run Electric collaboration on protection measures for buried Delaware River 230 kV transmission cable

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Schedule

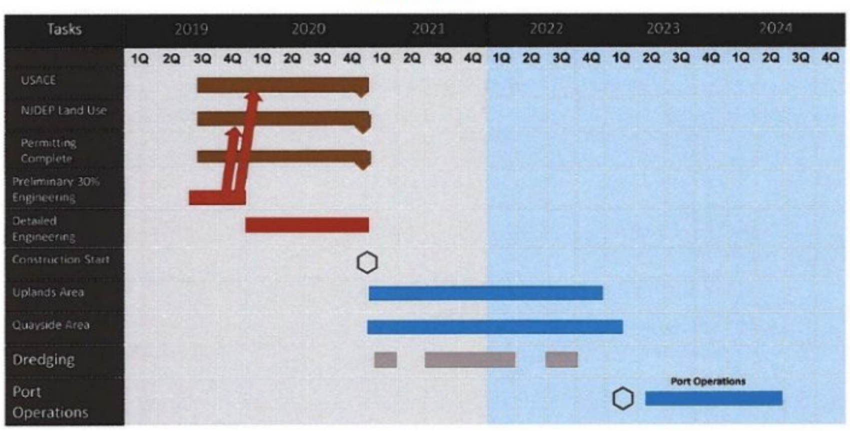

EXHIBIT A-3: Request for proposal for study expansion to include Hope Creek

On the advice of the Attorney General's office, McKinsey were invited to respond on the basis of the exact same scope of works applying to the previous amendment (South Amboy).

SCOPE OF WORK

Note – This work is fully independent of the first 1,100 MW offshore wind solicitation issued by the NJBPU on September 17, 2018. See below link for further detail on the NJBPU solicitation: *Board Order and Solicitation Guidance Document:* *http://www.bpu.state.nj.us/bpu/pdf/boardorders/2018/20180917/9-17-18-8G.pdf*

1 BACKGROUND

A once in a generation offshore wind (OSW) project pipeline

On 31 January 2018, Governor Phil Murphy signed Executive Order No.8 (EO8) directing the NJ Board of Public Utilities (NJBPU) and all state agencies with responsibility under the Offshore Wind (OSW) Economic Development Act (OWEDA) to "take all necessary action" to implement OWEDA and begin mobilizing towards a goal of 3,500 MW (3.5 GW) of OSW generation by 2030. The solicitation of 1,100 MW, to be awarded in July 2019, is the first step towards the 2030 target; with subsequent solicitations of 1,200 MW in 2020 and 1,200 MW scheduled for 2022. This forms part of a planned 18+ GW (18,000+ MW) OSW pipeline across the east coast region.

Besides ensuring new and clean generating capacity, this pipeline represents a "once in a generation" economic development opportunity. Delivery and ongoing servicing of the northeast region's proposed OSW pipeline is expected to require 23,000 – 37,000 jobs by 2028, according to a 2017 Clean Energy State Alliance Report. If New Jersey were to capture its proportional share of this economic activity, the State could expect that between 10,000 to 16,000 local jobs would be linked to the industry. Given its central location and early mover advantage this share could be significantly greater; provided the right settings are in place.

In this context, OSW was identified as a priority sector in the State's recent "State of Innovation" Economic Plan; with the Authority – through its new Office of Economic Transformation (OET) – tasked with identifying supply chain gaps and catalyzing economic development opportunities.

New and fit-for-purpose port capacity is required to meet 2030 OSW targets & maximize economic benefits for the State

Based on extensive industry feedback, the OET has identified an opportunity to catalyze the development of a new and fit-for-purpose hub-style marshalling, sub-assembly, and load out port; both to support the cost-effective delivery of the State's own OSW pipeline, and to maximize economic benefits for the State from the larger northeast pipeline.

Ports are critical to all aspects of OSW, with the bulk of component manufacturing, marshalling and final assembly taking place at or close to the portside. Ports must also be tailored to the specific needs of OSW projects and their supply chains. For example, large and heavy components such as nacelles, blades and foundations can typically only be transported by water; in-turn necessitating their manufacture and fabrication at or adjacent to the port itself. By extension, this requires quaysides that are reinforced sufficiently to accommodate significant component weights and scale; as well as sufficient water depth to accommodate the ships required to transport components to installation sites. In addition, waterfront facilities are needed to serve as installation and staging areas where components can be accumulated prior to being loaded onto the installation vessels and transported offshore. During both the construction and operations phases, crew transfer vessels need to make frequent transits to a wind farm, transporting the technicians responsible for construction, planned maintenance, and unplanned repairs. In summary, OSW port infrastructure requirements are unique, wide-ranging and extend over a project's entire life cycle, including eventual decommissioning and deconstruction.

Several detailed assessments of the State's and wider northeast region's existing port infrastructure has highlighted the need for new and fit-for-purpose capacity to meet OSW industry needs. This evidence base includes studies by the NJBPU, the US Department of Energy and the New York State Energy Research and Development Authority (NYSERDA), amongst others. Findings have been further substantiated through targeted consultation with industry, including a Request for Information (RFI) which the OET issued to industry in September last year. Besides identifying a need for additional port capacity, the RFI underscored the need for government action in order to bring new capacity online. The Authority is leading this work on behalf of the State and in consultation with its sister agencies on the Offshore Wind Interagency Taskforce.

SITE IDENTIFICATION – See section 3 below

Next steps – the Authority is commissioning an initial economic and financial feasibility study for a potential OSW port development

The Authority is exploring the potential for an OSW-focused port development at the confidential site identified in Section 3 below. Resolving whether – and in what form – a potential development is feasible at this location will require a phased decision-making process. Drawing on best practice, the Authority is pursuing a three-step process:

> Step One – Developing a "Strategic Business Case", to identify strategic needs and benefits;
>
> Step Two – Developing a "Preliminary Business Case", to reconfirm the need and benefits, and to arrive at a preferred development option; and
>
> Step Three – Developing a "Detailed Business Case", to develop a detailed evidence base with which to inform an investment decision and resolve the procurement method.

Step One is complete, with the Authority identifying a clear need (i.e. to bridge existing shortfalls in meeting OSW port needs) and benefits in meeting that need (i.e. on-time and cost-effective delivery of 2030 targets, as well as maximizing economic benefits for the State).

Step Two is underway, with work undertaken to identify an optimal location for a new port, based on strict technical criteria (see description of draft NJBPU port study in Section 3); with this work enabling locations to be refined down from 37 initial locations to one potential site.

The Authority is now seeking assistance with Step Two; specifically, it is commissioning an initial feasibility assessment of a limited range of development options at the site identified in Section 3. For each option, this assessment should determine to a high degree of accuracy:

- The economic return for the State and local municipality (expressed as a Benefit Cost Ratio (BCR));
- Financial viability (i.e. the revenue generating capacity relative to total cost, expressed in Net Present Value (NPV) terms); and
- Any fiscal implications for the State (e.g. a subsidy or concession fee).

The number of options to evaluate at the site and their precise parameters would be determined upfront by the successful contractor in close consultation with the Authority but is likely to be between two and four. The objective is to assist the Authority to begin to define the precise form of development that would deliver the largest economic return to the State; as well as to identify the financial viability and fiscal impacts of each option.

The outcomes from this initial feasibility assessment will form a key input to the Authority's decision on whether to proceed to a Detailed Business Case for the preferred option.

This scope of works involves an initial feasibility assessment only. Should the Authority decide to proceed with a Detailed Business Case for any option it will separately contract for that work.

The Authority may also choose to conduct feasibility studies for other sites at a future time.

2 DELIVERABLES & TIMEFRAMES

The Authority is seeking proposals from qualified firms to perform a two-phase feasibility assessment. Responses should detail how each phase of work – and deliverable – will be approached; and should consider how their approach will contribute to achieving the Authority's overall objectives.

The Authority expects that both Phases 1 and 2 will be completed within a 10-week timeframe from the date of contract execution.

Specific deliverables required for this Scope of Work include the following:

Phase 1 – Options identification (proposed timeframe 2 weeks)

Identify a limited range (e.g., 3-4) of port development options at the confidential site location.

Options will be developed in consultation with – and agreed to in writing by – the Authority before beginning a feasibility assessment on any of the options.

In developing options, firms should be guided by the Authority's overarching objective of determining the optimal development type, considering such factors as scope (e.g. manufacturing, staging, O&M etc.), sequencing (e.g. full versus scaled development) and footprint (e.g. size), as well as other key parameters, and should draw on:

- The specific technical characteristics of the confidential site;
- Port infrastructure needs relating to New Jersey's and the wider northeast region's (committed and planned) OSW project pipeline;
- A firm's knowledge of and experience with OSW projects and supply chains; and
- And any other inputs deemed relevant by the firm or Authority.

The Authority is not prescribing the precise number of options; rather, it is requiring firms to determine what is sufficient for a robust options assessment and ranking. However, the range of options should, at a minimum, include a "Base Case", both to inform the situation that will exist in the absence of an intervention and to assist with benchmarking.

All Phase 1 options should be clearly summarized before advancing to Phase 2.

The desired outcome from Phase 1 is a list of distinct and specific development options that can form the basis of a subsequent feasibility assessment and ranking process.

Phase 2 – Options assessment & ranking (proposed timeframe 8 weeks)

Options should be assessed on the basis of a broad range of qualitative and quantitative measures. At a minimum, this should include, for each option:

- A high-level strategic assessment – including:
  - Alignment with key objectives (e.g. state, community, agency);
  - Effectiveness in addressing service needs and achieving benefits sought;
  - Environmental impacts;
  - Planning and regulatory requirements; and
  - Other strategic measures as determined in conjunction with the Authority.
- A Cost Benefit Analysis (CBA) to determine expected economic returns for the State and local municipality (expressed as a Benefit Cost Ratio (BCR)), including direct, in-direct and induced impacts (and where material and feasible, non-market impacts);
  - Material cost or benefit impacts should be identified and explained; and
  - Sensitivity analysis should be undertaken for key assumptions.
- Financial viability ("affordability") – including an estimation of total realizable revenues for each option relative to total costs (expressed in Net Present Value (NPV) terms);
  - Major risk factors influencing revenue realization should be identified and explained; and
  - Sensitivity analysis should be undertaken for key assumptions.

Applicable discount rates are to be determined by the successful contractor, in close consultation with the Authority.

Firms should also seek to identity – and where possible quantify – fiscal impacts or implied impacts (e.g. a required subsidy or likely concession fee) for each option.

Firms should establish and document decision criteria to arrive at a preferred option.

The desired outcome from Phase 2 is to identify the most economically and financially viable development option; as well as to allow for a like-for-like comparison across options on the basis of economic and financial viability as well as fiscal impacts.

For the above scope of works (Phases 1 and 2) the Authority requests that responses outline:

- **A firm's capabilities in respect to major (economic) infrastructure project development, including early stage economic and financial feasibility. Capabilities and experience with maritime and OSW-related projects should be highlighted;**
- **Project team structure, and qualifications and experience of team members;**
- **Proposed technical approach and methodology to deliver on the scope in the stated timeframe (a maximum of 15 pages, exclusive of bios and experience narratives). In particular, methodologies for calculating capital costs, economic benefits, and realizable revenues should be explained; and**
- **The client support model (e.g. how and how often will the Authority be engaged).**

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EXHIBIT A-4: McKinsey's proposal

McKinsey
& Company

New Jersey Economic Development Authority

Offshore Wind Port Feasibility Study – Second Location

Cost Proposal for Additional Work

August 16, 2019

Submitted to:
New Jersey Economic Development Authority
Steven M. Quattro, Manager, Procurement & Support Services
Email: squattro@njeda.com
Phone: (609) 858-6913

DRAFT, CONFIDENTIAL & PRE-DECISIONAL

McKinsey & Company

McKinsey & Company, Inc. Washington D.C.
1200 19th Street NW Suite 1000
Washington DC 20036
United States
Telephone +1 202 662 3100
Fax +1 202 662 3175

August 16, 2019

Steven M. Quattro
Manager, Procurement & Support Services
New Jersey Economic Development Authority
36 West State Street
P.O. Box 990
Trenton, NJ 08625-0990
Email: fcole@njeda.com
Phone: (609) 858-6867

SUBJECT: State of New Jersey, Economic Development Strategic Planning Consulting Services Contract Award – Cost Proposal for Additional Work: Second Offshore Wind Port Feasibility Study (2018-GSA-RFQ-080)

Dear Mr. Quattro:

Please find attached McKinsey & Company, Inc. Washington D.C.'s (McKinsey) response to the State of New Jersey's request for a cost proposal for a second port feasibility study. We look forward to continuing our partnership with the New Jersey Economic Development Authority (NJEDA) to help grow New Jersey's economy and develop the offshore wind industry.

This new phase of work flows from NJEDA's strategic focus on offshore wind as a priority sector, ties to our recent work together to develop pitch packs for attracting offshore wind companies, and is a logical follow-on to the South Amboy study, as there are synergies in studying two ports concurrently. In conducting a port feasibility assessment, we can continue to support the NJEDA team and help add to the organization's successes in attracting businesses and sectors to New Jersey's vibrant, growing economy.

If you have any questions about our proposal response, please do not hesitate to contact me at (901) 497-6360 or Sarah_Tucker-Ray@McKinsey.com. For contractual questions, please contact Geoff Bradford, Contracts Manager, at (202) 662-0522 or Geoff_Bradford@mckinsey.com and mckinsey_contracts@mckinsey.com.

Sincerely,

Sarah Tucker-Ray

Sarah Tucker-Ray, Partner

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Table of Exhibits

1.0 TECHNICAL APPROACH

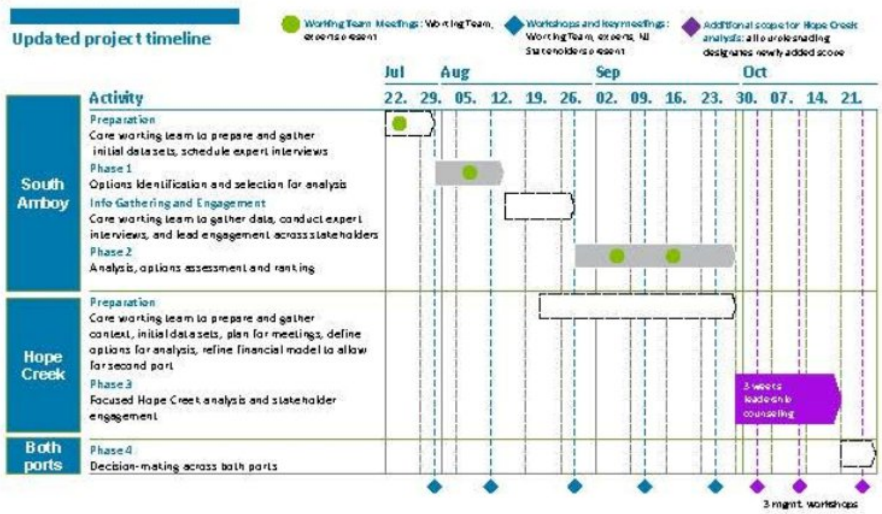
The New Jersey Economic Development Authority (NJEDA) defined the scope for this new requirement as mirroring the scope requested for the South Amboy analysis. Accordingly, we have mirrored our approach – including activities and deliverables – to our approach for the South Amboy analysis (see below). Our timing, however, is different, given the synergies in using the financial model and data inputs gathered as part of the South Amboy study.

1.1 Our Approach

We propose an additional four weeks to be added to the existing South Amboy study, with three weeks of leadership counseling and three management workshops to allow for the Hope Creek-specific analysis and decision-making needed. We will be able to run our preparation activities in parallel with the existing South Amboy study, creating efficiencies for the NJEDA team.

Our proposed timeline for completing the activities is below (**Exhibit 1**). We will work with NJEDA at project start to determine the dates for key meetings and workshops to ensure sufficient preparation across stakeholders.

Exhibit 1: Proposed workplan.



Activities

Activities are detailed across three periods: Preparation, Phase 3 (core analysis of Hope Creek), and Phase 4 (decision-making and comparison of Hope Creek and South Amboy). We will conduct the following activities for each phase:

PREPARATION

- Refine understanding of market baseline (e.g., annual offshore wind [OSW] activity, supply chain development, NJ's likely market share, how a Hope Creek port could interact with South Amboy's port).
- Define assessment criteria and refine the assessment criteria generated for South Amboy given any additional considerations.
- Define options for analysis for the Hope Creek site (e.g., parcels, economic activity feasible on each parcel, appropriate combinations of parcels/activities to form a limited number of options for analysis).

- Conduct a site visit to refine understanding of the site and its parcels.
- Generate list of data needed and stakeholders to engage.
- Finalize meeting cadence and decision-making timeline.

PHASE 3 – CORE ANALYSIS OF HOPE CREEK (FOLLOWING THE PRIOR PHASES 1 AND 2 FOR SOUTH AMBOY):

- Analyze the options defined for Hope Creek, including financial viability analysis, cost-benefit analysis, and a high-level strategic assessment.
  - Financial viability analysis will include consideration of potential revenue models with estimation of total realizable revenues, major risk factors affecting revenue realization, and estimated total capital cost for investment, expressed in net present value (NPV) terms. Finally, we will consider potential state investments needed to support the business case.
  - Analysis will include building on the model developed for South Amboy, plus additional expert interviews, data gathering, and benchmarking.
  - Cost-benefit analysis will include estimation of economic returns for the State and local municipality, including direct, indirect, and induced impacts. Estimation of tax revenue generation will be completed using existing NJEDA or New Jersey State government models.
- Engage stakeholders on analysis to refine assumptions, including refinement of decision criteria.
- Hold two workshops during this period to align on options for Hope Creek and then to review initial insights from the financial feasibility analysis and cost-benefit analysis.

PHASE 4 – DECISION-MAKING AND COMPARISON OF HOPE CREEK AND SOUTH AMBOY:

- Compare findings across both South Amboy and Hope Creek, in terms of feasibility, economic impact, timing, risk.
- Build a "traffic light" assessment of each option, including comparison to South Amboy.
- Hold a final workshop to support decision-making by NJEDA and stakeholders.

1.2 Deliverables

We commit to deliver the following deliverables by October 25:

- Financial feasibility analysis for 1-3 options for the Hope Creek site.
- Updated financial model MS Excel tool for use by the NJEDA team.
- Economic impact analysis of each option for Hope Creek, and combined perspective on Hope Creek + South Amboy.
- Materials for three workshops.
- "Traffic light" assessment for go/no go decision-making across both South Amboy and Hope Creek ports given comparative analysis.

1.3 Our Team

Our team for the Hope Creek site study will be the same as our team for the study of the South Amboy site. Our team will include Steve Van Kuiken (Senior Partner), Mike Kerlin (Partner), Sarah Tucker-Ray (Partner), Johannes Lüneborg (Partner), Michael Della Rocca (Partner), Chris Toomey (Capital Projects and Infrastructure Vice President), Amy Tsui (Engagement Manager), and Bogdan Rozhkov (Analyst).

They will draw on analytics support from our research and insights team, in addition to other experts in OSW, port development, capital projects, real estate, and economic analysis.

We will also bring additional team members to support analysis and materials preparation as needed. Our overall organizational chart is unchanged from prior phases of work with NJEDA.

2.0 COST PROPOSAL

Based on our commitment to the Authority and our enthusiasm to remain a strategic partner of NJ EDA, McKinsey & Company, Inc. Washington D.C. ("McKinsey") would like to note that our Firm is currently renegotiating its U.S. General Services Administration ("GSA") schedule contracts with the GSA and has agreed that during such contract renegotiations, McKinsey will refrain from accepting new awards under its GSA schedule contracts. McKinsey is a contractor in good standing. McKinsey's agreement with GSA to refrain from accepting new GSA contract awards does not affect McKinsey's ability to contract with NJ EDA under our 2018-GSA-RFQ-080 Economic Consulting Services contract, and looks forward to supporting the Authority on this critical program.

We propose to complete the deliverables defined in Section 1.2 with our Leadership Counseling and Management Workshop team bundles. McKinsey is pleased to honor the team bundle rates previously proposed under the NJEDA's 2018-GSA-RFQ-080 Economic Consulting Services contract. This equates to a one-time discount of $29,619.06 from McKinsey's commercial rates.

Exhibit 2 includes McKinsey's proposed pricing and current commercial rates for comparison, for the Authority's reference. In accordance with Section 4.4.5.3 of NJ EDA's 2018-GSA-RFQ-080 Economic Consulting Services contract, McKinsey is not including our standard travel costs, which usually account for an additional 6.6% of our team bundle price.

Exhibit 2: McKinsey's proposed price.

Team	Commercial Rate	Proposed Rate	Weeks	Total Price
Leadership Counseling	$40,000.00	$34,288.98	3	$102,866.94
Management Workshop	$50,000.00	$45,838.00	3	$137,514.00
			Total McKinsey Labor	**$240,380.94**
Travel				$0
			TOTAL FIRM-FIXED-PRICE	**$240,380.94**

We look forward to the opportunity to serve the Authority on this critical effort and believe our proposal demonstrates our commitment to supporting the Authority, our partnership to help the Authority continue to achieve its mission, and the ultimate best value to the Authority for this requirement.

DRAFT, CONFIDENTIAL & PRE-DECISIONAL

EXHIBIT A-6: July 16 Board Memorandum

NJEDA

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: July 16th, 2019

SUBJECT: Offshore wind (OSW) port – economic and financial feasibility assessment

Request

The Members of the Board are asked to approve the Authority entering into a contract amendment to NJEDA-2018-GSA-RFQ080 with McKinsey and Company, Inc. Washington D.C. (McKinsey) to assess the economic and financial viability of a new offshore wind (OSW) port development project. Due to potential commercial considerations, the location of the project – which has been identified based on a significant body of work – remains confidential at this time.

The contract amendment is for a firm-fixed-price, not to exceed amount of $365,987.84, with the contract amendment subject to the existing contract's initial two (2) year contract term.

Staff anticipates the report will be finalized within a ten (10) week period from date of contract execution.

Findings from the feasibility study will be used to inform any subsequent decision by the Authority on whether and how to proceed with a potential development.

Background

Based on significant evidence of the strategic need, and conscious of the need to mobilize quickly to capture maximum economic benefits, staff seeks approval to commission a feasibility assessment of a potential OSW port. This will clarify the economic and financial viability of a new OSW-focused port, as well as the optimal development type, sequencing and footprint. As such, this study represents an important decision point for the Authority and State.

With other states already mobilizing, delays risk New Jersey missing out on potential supply chain benefits. For example, New York Governor Cuomo has announced a $200 million-dollar commitment to support the development of OSW port facilities, while a site on Arthur Kill was recently identified as high-potential for OSW marshalling (which could potentially service NJ and NY projects).

This Memorandum clarifies staff's proposed objectives, decision-making pathway and timeframes. In particular, it explains why new OSW port infrastructure is required and why staff is proposing that the Authority lead this work, how the proposed contract amendment advances a potential port development, and when key milestones in the Authority's broader decision-making process are expected to be achieved.

This Memorandum is structured as follows:

1 A once in a generation offshore wind (OSW) pipeline
2 The need for new and fit-for-purpose port capacity to meet OSW needs
3 Site identification
4 Next step – commissioning an economic and financial feasibility study
5 Procurement and timeframes
6 Mitigating conflicts with NJ Board of Public Utilities' (NJBPU) (now complete) OSW solicitation
7 Recommendation

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1 A once in a generation offshore wind (OSW) project pipeline

On 31 January 2018, Governor Phil Murphy signed Executive Order No.8 (EO8) directing the NJBPU and all state agencies with responsibility under the Offshore Wind (OSW) Economic Development Act (OWEDA) to "take all necessary action" to implement OWEDA and begin mobilizing towards a goal of 3,500 MW (3.5 GW) of OSW generation by 2030. The solicitation of 1,100 MW, awarded in June this year, was the first step towards the 2030 target; with additional scheduled solicitations of 1,200 MW in 2020 and 1,200 MW in 2022.

New Jersey is also part of a collective of East Coast states including New York, Massachusetts, and Maryland that have announced a potential 18+ GW OSW project pipeline. Besides ensuring new and clean generating capacity, this pipeline represents a once in a generation economic development opportunity. According to the University of Delaware's Special Initiative on Offshore Wind there is a nearly $70 billion capital investment opportunity for businesses in the offshore wind power supply chain over the course of the next decade. *Exhibit A-1* highlights the State's geographic advantage in capitalizing on this opportunity.

Delivery and ongoing servicing of the region's proposed OSW pipeline is expected to require 23,000 – 37,000 jobs by 2028, according to a 2017 Clean Energy State Alliance Report. If New Jersey were to capture its proportional share of this economic activity, the state could expect that between 10,000 to 16,000 local jobs would be linked to the industry. Given New Jersey's transparent and aggressive procurement schedule outlined by the NJBPU in 2018 (of 1,100 MW in 2018, 1,200 MW in 2020, and 1,200 MW in 2022), as well as its commitment to support infrastructure, innovation, and workforce development in the OSW industry, the State is very well-positioned to serve as a supply chain hub. This competitive advantage was further strengthened with the NJBPU's award on June 21 this year of the first (1,100 MW) to Ørsted.

In this context, OSW was identified as a focus sector in the Governor's 2018 "State of Innovation" Economic Plan; with the Authority – through its Office of Economic Transformation (OET) – tasked with identifying supply chain gaps and realizing development opportunities. Specifically, the Authority has focused its efforts on understanding the economic opportunity of the OSW industry, refining the State's value proposition for potential OSW supply chain companies, and performing analysis to identify ports and infrastructure to serve and attract the industry.

2 The need for new and fit-for-purpose port capacity to meet OSW needs

New and fit-for-purpose port capacity is required to meet 2030 OSW targets and to maximize economic benefits for the State.

Based on extensive industry feedback, the OET has identified an opportunity to catalyze the development of a transformational hub-style port; both to support the cost-effective delivery of the State's own OSW pipeline, and to maximize economic benefits for the State from the larger northeast pipeline.

More broadly, the opportunity recognizes the critical 'pull' factor that ports represent for aspects of the OSW supply chain. Ports are critical to all aspects of OSW, with the bulk of component manufacturing, marshalling and final assembly taking place at or close to the portside. Ports are often tailored to the specific needs of OSW projects and their supply chains. For example, large and heavy components such as nacelles, blades and foundations can typically only be transported by water; in-turn necessitating their manufacture and fabrication at or adjacent to the port itself. By extension, this requires quaysides that are reinforced sufficiently to accommodate significant component weights and scale; as well as sufficient water depth to accommodate the ships required to transport components to installation sites. In addition, waterfront facilities are needed to serve as installation and staging areas where components can be accumulated prior to being loaded onto the installation vessels and transported offshore. During both the construction and operations phases, crew transfer vessels need to make frequent transits to a wind farm, transporting the technicians responsible for construction, planned maintenance, and unplanned repairs. In summary, OSW port infrastructure requirements are unique, wide-ranging and extend over a project's entire life cycle, including eventual decommissioning and deconstruction.

Several detailed assessments of the State's and wider northeast region's existing port infrastructure has highlighted the need for new and fit-for-purpose capacity to meet OSW industry needs. This evidence base includes studies by the NJBPU (ongoing), the US Department of Energy and the New York State Energy Research and Development Authority (NYSERDA), amongst others.

Findings have been further substantiated through targeted consultation with industry, including a Request for Information (RFI) which the OET issued to industry in September last year. Besides identifying a need for additional port capacity, the RFI underscored the need for government action in order to bring new capacity online. The Authority is leading the initial groundwork on behalf of the State and in consultation with its sister agencies on the Offshore Wind Interagency Taskforce.

Exhibit A-2 showcases a European offshore wind port development, located in Hull, England – this development has already seen £310 million ($400 million) invested by the private sector in turbine production facilities, with a target to attract a total of £1billion ($1.3 billion).

3 Site identification

Significant work has been undertaken to identify potential locations for a transformational hub-style OSW port based on strict technical requirements; with this work identifying one location as most suitable.

This evidence base includes detailed studies by NJBPU and NYERSDA, as well as industry responses to an RFI which the Authority issued to the OSW industry in September last year. Technical studies and RFI responses indicated that the site under consideration has very high potential to support a transformational hub-style OSW port.

For these reasons, Staff is seeking to appraise the economic and financial feasibility of a port development at the site – while retaining the option to undertake feasibility studies of other sites in the future.

4 Next step – commissioning an economic and financial feasibility study

Resolving whether – and in what form – a potential development is economically and financially feasible at this site will require a phased decision-making process. To this end, and drawing on best practice, the Authority has adopted the following three-step decision-making process:

> Step One – Developing a "Strategic Business Case", to identify strategic needs and benefits;
>
> Step Two – Developing a "Preliminary Business Case", to reconfirm the need and benefits, and to arrive at a preferred development option; and
>
> Step Three – Developing a "Detailed Business Case", to develop a detailed evidence base with which to inform an investment decision and resolve the procurement method.

Step One is complete, with staff identifying a clear need (i.e to bridge existing shortfalls in meeting OSW port needs) and benefit in meeting that need (i.e on-time and cost-effective delivery of 2030 targets, as well as maximizing economic benefits for the State).

Step Two is underway, with work already undertaken to identify locations for a port development, based on strict technical criteria (see description of the draft NJBPU port study above). This enabled the identification of the highest potential locations based on a list of 35+ initially identified areas.

Staff is now requesting approval to seek expert assistance with Step two; specifically, commissioning a feasibility assessment of a limited range of development options at the identified site. For each option, this assessment would determine to a high degree of accuracy:

- The economic return for the State and local municipality (expressed as a Benefit Cost Ratio (BCR));[1]
- Financial viability (i.e. the revenue generating capacity, relative to total cost, expressed in Net Present Value (NPV) terms); and
- Any fiscal implications for the State (e.g. requirement for a subsidy).

The outcomes from this initial feasibility assessment will form a key input to the Authority's decision on whether to proceed to a Detailed Business Case for the preferred option.

This RFP's Scope of Work contemplates an initial feasibility assessment only. Should staff consider that the Authority should proceed with a Detailed Business Case for any option, staff will separately solicit bid proposals and present recommendations to the Board for a separate

1 A BCR is the ratio of the benefits of a project or proposal, expressed in monetary terms, relative to its costs, also expressed in monetary terms

contract or contract amendment(s) for that work.

Staff may present recommendation(s) for feasibility studies for other sites at a future time.

5 Procurement the of study & timeframes

The selection of a contractor for this work followed an extensive procurement process.

Reflecting the need to mobilize quickly to maximize economic benefits for the State, as well as commercial confidentiality considerations relating to future site acquisition, the Authority opted to utilize the U.S. General Services Administration ("GSA") process to procure a qualified contractor. Based on an assessment of capability with infrastructure feasibility and early-stage development, the Authority approached nine (9) GSA vendors to determine interest and to confirm that the vendor would not be conflicted due to past or ongoing direct or indirect involvement with NJPBU's OSW solicitation.[2] All nine (9) Vendors were requested to submit a signed confidentiality statement and eligibility declaration form. Based on this:

- Six (6) vendors declined to submit confidentiality statements and non-conflict declaration forms, five (5) stating it was due to their past or ongoing involvement in NJBPU's (then underway) 1,100MW OSW solicitation, with one (1) firm not responding at all;
- Three (3) vendors, while confirming no involvement with NJBPU's solicitation, chose not to submit a proposal.

As this approach did not result in bid submittals, requests for quotes under the "additional work" clauses of existing consulting contracts were issued to two firms, Jones Lang LaSalle Americas, Inc. (JLL) and McKinsey and Company, Inc. Washington D.C. (McKinsey), who have existing contracts with the Authority for economic and/or real estate consulting work.

Both firms were required to confirm their non-involvement with the NJBPU solicitation and provide confidentiality statements, in advance of receiving the request for quote. The Scope of Works remained unchanged from the earlier GSA RFP and the responses were assessed using the same criteria.

An Evaluation Committee comprising qualified Authority staff reviewed both submissions and recommended proceeding with additional work under the existing contract with McKinsey, which better demonstrated the necessary experience to undertake the services related to the Scope of Work. Staff then issued McKinsey a Best and Final Offer letter, and McKinsey responded with a not to exceed amount of $365,987.84.

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2 Vendors who received proposals were selected from GSA e-Library, per GSA Schedule SIN Categories 871-1 (Professional Engineering Services – Strategic Planning for Technology Programs/Activities) and 874-1 (Mission Oriented Business Integrated Services – Integrated Consulting Services

6 Mitigating conflicts with NJBPU's OSW (now complete) solicitation

The Authority took the following steps to mitigate any potential conflicts with the NJBPU's process, which was then underway:

1. Bidders, and JLL and McKinsey, were required to declare that they are not party to – or previously party to – a bid before the NJBPU regarding that agency's 1,100MW OREC solicitation issued on September 17, 2018; and
2. Bidders, and JLL and McKinsey, were required to sign a confidentiality statement, agreeing to treat any site information included in the RFP as strictly confidential.

In addition, the GSA RFP and request for quotes to JLL and McKinsey explicitly stated that the procurement of the feasibility study is independent of the solicitation issued on September 17, 2018 by the NJBPU, for the development of the first 1,100 MW of offshore wind in New Jersey.

The NJBPU's solicitation concluded on June 21st with the announcement that Danish company Orsted had been granted the award for the first 1,100 MW. The announcement is available here: https://www.bpu.state.nj.us/bpu/newsroom/2019/approved/20190621.html

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7 Recommendation

The Members of the Board are asked to approve the Authority entering into a contract amendment to NJEDA-2018-GSA-RFQ080 with McKinsey and Company, Inc. Washington D.C. (McKinsey) to assess the viability of a new Offshore Wind (OSW) port at a preidentified location.

The contract amendment is for a firm-fixed-price, not to exceed amount of $365,987.84, with the contract amendment subject to the existing contract's initial two (2) year contract term

Tim Sullivan
Chief Executive Officer

Prepared by: Jonathan Kennedy and Brian Sabina

EXHIBIT A-1: **Offshore Wind Lease Areas**

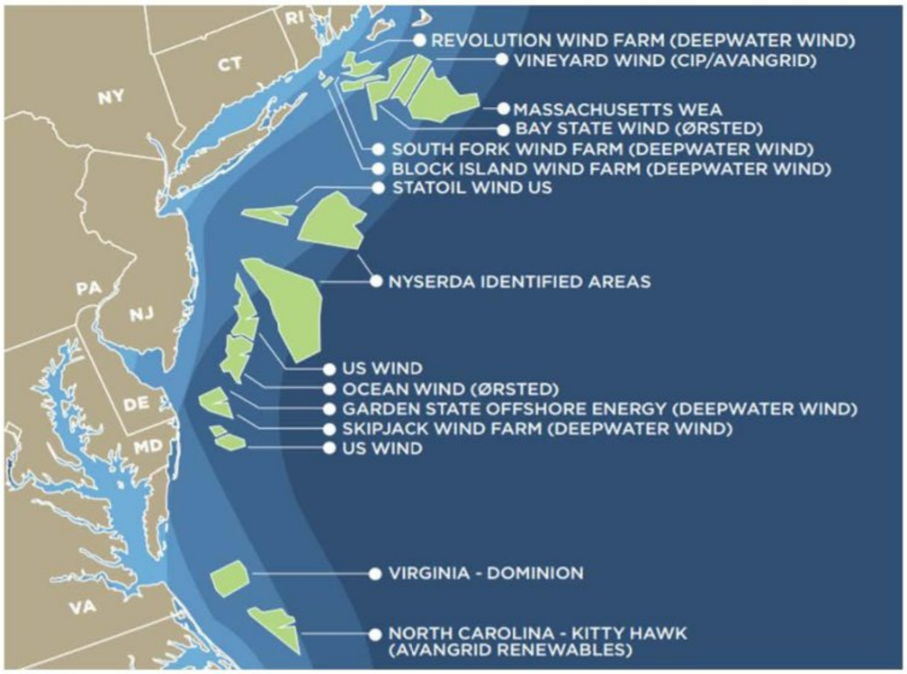

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EXHIBIT A-2: Green Port Hull – An OSW port development in Hull, UK

Below are visual impressions of a future Green Port Hull, a £1billion (US$1.3 billion) development that is currently underway. The development aims to build upon an existing £310 million (US$400 million) investment by Siemens in OSW turbine production at Hull's Alexandra Dock.

Source: https://greenporthull.co.uk/projects/alexandra-dock