



MEMORANDUM

TO: Members of the Authority

FROM: Timothy Sullivan
Chief Executive Officer

DATE: December 8, 2021

SUBJECT: Agenda for Board Meeting of the Authority December 8, 2021

Notice of Public Meeting

Roll Call

Approval of Previous Month's Minutes

CEO's Report to the Board

Authority Matters

Economic Growth

Incentives

Bond Projects

Loans/Grants/Guarantees

Real Estate

Board Memoranda

Public Comment

Executive Session

Adjournment

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

November 10, 2021

MINUTES OF THE MEETING

The Meeting was held by teleconference call.

Members of the Authority present via conference call: Chairman Kevin Quinn, Noreen Giblin representing the Governor's Office; Commissioner Marlene Caride of the Department of Banking and Insurance; State Treasurer Elizabeth Muoio of the Department of Treasurer; Commissioner Robert Asaro-Angelo of the Department of Labor and Workforce Development; Public Members: Charles Sarlo, Vice Chairman; Virginia Bauer, Fred Dumont, Aisha Glover, Marcia Marley, Robert Shimko, First Alternate Public Member; and Rosemari Hicks, Second Alternate Public Member.

Also present via conference call: Timothy Sullivan, Chief Executive Officer of the Authority; Assistant Attorney General Gabriel Chacon; Jamera Sirmans, Governor's Authorities Unit; and staff.

Members of the Authority absent: Elizabeth Dragon representing Commissioner Shawn LaTourette of the Department of Environmental Protection; and Public Members Philip Alagia, and Massiel Medina Ferrara.

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

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 October 13, 2021 meeting minutes. A motion was made to approve the minutes by Mr. Dumont, seconded by Commissioner Caride, and was approved by the 10 voting members present.

The next item of business was the approval of the October 13, 2021 executive session meeting minutes. A motion was made to approve the minutes by Commissioner Angelo, seconded by Ms. Bauer, and was approved by the 10 voting members present.

FOR INFORMATION ONLY: The next item was the presentation of the Chairman's remarks to the Board.

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

Vice Chairman Sarlo joined the call at this time.

INNOVATION

ECONOMIC GROWTH

ITEM: Shore Expansion of NJ ZIP, the New Jersey Zero-emission Incentive Program: Voucher Pilot for Medium-duty Zero-emission Vehicles

REQUEST: To approve expansion to the New Jersey Economic Development Authority's (NJEDA) existing zero-emission medium-duty vehicle voucher pilot program called NJ ZIP, the New Jersey Zero-emission Incentive Program. The goal of this expansion is to pilot the program in overburdened communities with lower population density, necessitating an update to the community selection methodology, as well as to deepen access to different vehicle use-cases.

MOTION TO APPROVE: State Treasurer Muoio **SECOND:** Ms. Glover **AYES: 11**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 1

INCENTIVES

ITEM: Special Adopted New Rules and Concurrent Proposed New Rules for the Aspire Program (N.J.A.C. 19:31-23)

REQUEST: To approve special adopted new rules and concurrent proposed new rules for the new Aspire Program and to authorize staff to submit the special adopted new rules and concurrent proposed program rules as final adopted rules for promulgation in the New Jersey Register; and creation of the Aspire Program, a gap financing tax incentive program as initially authorized by the New Jersey Economic Recovery Act of 2020, to encourage the development of commercial, mixed use, and residential real estate projects in New Jersey by providing tax credits in an amount based on a percentage of the project's total costs.

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

RESOLUTION ATTACHED AND MARKED EXHIBIT: 2

Ms. Hicks abstained because she had just joined the call.

FILM & DIGITAL MEDIA TAX CREDIT

FILM TAX CREDIT

Universal Television, LLC

PROD-00192239

MAX AMOUNT OF TAX CREDITS: \$2,047,561.17

MOTION TO APPROVE: Ms. Bauer **SECOND:** Commissioner Caride **AYES: 12**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 3

Due Season Movie, LLC

PROD-00258366

MAX AMOUNT OF TAX CREDITS: \$509,741.23

MOTION TO APPROVE: Ms. Bauer **SECOND:** Mr. Dumont **AYES: 12**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 4

DIGITAL MEDIA TAX CREDIT

Audible, Inc.

PROD-00188254

MAX AMOUNT OF TAX CREDITS: \$7,047,240.20

MOTION TO APPROVE: Ms. Giblin **SECOND:** Commissioner Angelo **AYES: 11**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 5

Ms. Glover abstained because she is employed by Audible, Inc.

LOANS, GRANTS, GUARANTEES

ITEM: Main Street Micro Business Loan

REQUEST: To approve the creation of the Main Street Micro Business Loan Program to replace the Micro Business Loan Program, Main Street Recovery Fund utilization of up to \$20 million to fund the Main Street Micro Business Loan pilot program and associated delegated to Authority staff for administration of the program.

MOTION TO APPROVE: Ms. Marley **SECOND:** Commissioner Caride **AYES: 12**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 6

Hazardous Discharge Site Remediation Fund (HDSRF)

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

MOTION TO APPROVE: Ms. Bauer **SECOND:** Ms. Giblin **AYES: 12**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 7

PROJECT: City of Paterson – BDA Salvation Army

PROD. #00200790

LOCATION: Paterson City, Passaic County

PROCEEDS FOR: Site Investigation, Preliminary Assessment

FINANCING: \$18,687.00

PROJECT: City of Paterson – ATP Processors LTD

PROD. #00258233

LOCATION: Paterson City, Passaic County

PROCEEDS FOR: Preliminary Assessment, Remedial Investigation

FINANCING: \$243,431.00

PROJECT: City of Paterson – ATP Processors LTD

PROD. #00297238

LOCATION: Paterson City, Passaic County

PROCEEDS FOR: Remedial Action

FINANCING: \$1,605,084.16

Petroleum Underground Storage Tank (PUST)

ITEM: Summary of NJDEP Petroleum UST Remediation, Upgrade & Closure Fund Program project approved by the Department of Environmental Protection.

MOTION TO APPROVE: Ms. Hicks **SECOND:** Ms. Bauer **AYES: 12**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 8

Residential:

PROJECT: Vitor Santos
LOCATION: Elizabeth City, Union County
PROCEEDS FOR: Upgrade, Closure and Remediation
FINANCING: \$114,916.69

PROD. #00297214

Not-for-Profit:

PROJECT: St. Luke's Episcopal Church
LOCATION: Montclair Township, Essex County
PROCEEDS FOR: Upgrade, Closure and Remediation
FINANCING: \$123,230.37

PROD. #00258032

BOND PROJECTS

ITEM: Defeasance and Redemption of Certain Outstanding NJEDA/School Facilities Construction Bonds - PROD-00147142, PROD-00147165, PROD-00147170, PROD-00179776, PROD-00179889, PROD-00172889, PROD-00174158, PROD-00174506, PROD-00185027, PROD-00188055

REQUEST: To approve a resolution authorizing an Authorized Officer of the Authority to enter into an Escrow Deposit Agreement, directing the Trustee to defease and redeem all or a portion of certain of the Authority's Outstanding School Facilities Construction Bonds and to approve the use of professionals and authorize Authority staff to take all necessary actions incidental thereto.

MOTION TO APPROVE: Commissioner Angelo **SECOND:** Ms. Bauer **AYES: 12**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 9

ITEM: Defeasance and Redemption of Certain Outstanding NJEDA/Cigarette Tax Revenue Refunding Bonds, Series 2012 - PROD-00182708

REQUEST: To approve a resolution authorizing an Authorized Officer of the Authority to enter into an Escrow Deposit Agreement, directing the Trustee to defease and redeem all or a portion of the Authority's Outstanding Cigarette Tax Revenue Refunding Bonds, Series 2012 and to approve the use of professionals and authorize Authority staff to take all necessary actions incidental thereto.

MOTION TO APPROVE: Ms. Marley **SECOND:** Commissioner Caride **AYES: 12**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 10

AUTHORITY MATTERS

ITEM: MOU with the NJIT for Airport City Newark

REQUEST: To approve a Memorandum of Understanding (MOU) with the New Jersey Institute of Technology to provide matching funding for the purpose of economic analysis around Newark Liberty International Airport Station.

MOTION TO APPROVE: State Treasurer Muoio **SECOND:** Ms. Bauer **AYES: 12**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 11

ITEM: Contract Award -2021-RFP 057 Microsoft Cloud Development and Support Services
REQUEST: To approve the Authority entering into the Microsoft Cloud Development and Support Services contract based on a publicly advertised procurement.
MOTION TO APPROVE: Ms. Bauer **SECOND:** Ms. Marley **AYES: 12**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 12

Mr. Sullivan advised that he recused himself from this procurement because he previously worked with one of the bidders.

BOARD MEMORANDA - FYI ONLY:

- Credit Underwriting Projects Approved Under Delegated Authority, October 2021
- Economic Growth Products – Delegated Authority Approvals for 3rd Quarter, 2021
- Film and Digital Media Tax Credit Program – Notice of Award Increase for Redo Askew LLC – PROD-00258300
- Post-Closing Bonds Delegated Authority, 3rd Quarter, 2021
- Post-Closing Credit Delegated Authority, 3rd Quarter, 2021
- Post-Closing Incentives Delegated Authority, 3rd Quarter, 2021

PUBLIC COMMENT

Mr. Charles Kratovil, Editor, New Brunswick Today, and New Brunswick resident, addressed the Board reiterating his concerns pertaining to the New Brunswick Development Corporation (DEVCO).

There being no further business, on a motion by Mr. Quinn, and seconded by Ms. Bauer, the meeting was adjourned at 11:26am.

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.


Danielle Esser, Director
Governance & Strategic Initiatives
Assistant Secretary



MEMORANDUM

To: Members of the Authority

From: Tim Sullivan

Date: December 8, 2021

Re: December 2021 Board Meeting

A stronger, fairer economy has long been Governor Phil Murphy's focus, but this month, progress under NJEDA programs accelerated momentum toward a greener, more environmentally just recovery from the COVID-19 pandemic.

This includes last week's expansion of eligibility for NJEDA's popular New Jersey Zero Emission Incentive Program (NJ ZIP) pilot program to include small businesses in the Greater Shore Area. The program helps businesses with fewer than 25 employees and less than \$5 million in annual revenue offset the cost of purchasing new, zero-emission medium-duty vehicles (MDVs). Last month, the NJEDA Board approved a \$20 million expansion of the program funding pool, which was previously only available to entities in the greater Newark, Camden, and New Brunswick areas. With this expansion, nearly \$45 million has been allocated to the voucher pool. Applications are being accepted on a rolling basis and can be found at <http://www.njeda.com/njzip>.

The NJEDA also announced last week that applications are open for the Offshore Wind Tax Credit Program as updated by the New Jersey Economic Recovery Act (ERA). With an overall budget of up to \$350 million, the program provides tax credits, often up to 40-60 percent of the qualified capital investments made by a business in a qualified wind energy facility that will be employing at least 150 new, full-time employees.

This news comes on the heels of Governor Murphy's announcement of the Legislature's commitment of an additional \$265 million for construction of the New Jersey Wind Port in Lower Alloways Creek, Salem County. This commitment sends a clear message to the industry that New Jersey is committed to delivering this purpose-built infrastructure asset on schedule, and that our state is clearly the location of choice for offshore wind manufacturers looking for a strategic position in the Northeast and Mid-Atlantic regions.

I recently had the pleasure of providing an update on the Wind Port at the November meeting of the Southern New Jersey County Commissioner Association, which included County Commissioners from the eight South Jersey counties. The excitement for the project in the room was palpable, as we talked through progress to date, and the expectation that the Wind Port will create thousands of good jobs and significant economic activity for many years to come.

The momentum toward a greener economy will continue into 2022, as we roll out a pipeline of programs focus on environmental justice, including the Brownfields Impact Fund. Earlier this week, we announced that the Fund, which will provide grant funding and low-interest loans to public sector and non-profit organizations, as well as low-interest loans to for-profit organizations, to carry out cleanup activities at brownfield sites throughout the state, will launch later this winter. The Fund will help to remediate contaminated vacant or underutilized commercial or industrial sites that are draining local economies, so that they may be redeveloped into productive community assets. Potential applicants for the program can pre-qualify for the program now by visiting <https://www.njeda.com/brownfieldsimpactfund/>.



As we wrap up 2021, I'd like to take this opportunity to thank the entire NJEDA team, and this Board, in particular, for an exceptionally productive year, despite continued extraordinary challenges. While there is still considerable work to be done to ensure a robust, equitable, and inclusive recovery from the COVID-19 pandemic for businesses all over the state, I am incredibly proud that as a result of the efforts of this remarkable team, many businesses are doing better this holiday season than they otherwise might have been. I wish you a joyful, and relaxing holiday season with those most important to you.

A handwritten signature in dark ink, appearing to be "T. L.", is written above a solid horizontal line.

MEMORANDUM

To: Members of the Authority

From: Timothy Sullivan
Chief Executive Officer

Date: December 8, 2021

RE: Recommendation for Grant Awards – Phase One Government Restricted Municipality Planning Grants Program

Request

The Members are requested to approve Phase One Government Restricted Municipality (GRM) planning grants, of \$250,000 each to:

- The City of Atlantic City for Atlantic City
- The City of Trenton for Trenton
- The City of Paterson for Paterson

To develop comprehensive strategic action plans that will identify technical planning gaps in planned but unrealized projects with great potential for sustainable community focused economic development from the library of plans completed by the municipality, business partners and community stakeholders.

Phase One grants and following plans will set the stage for the projected implementation funding in Phase Two, which will provide funding to close the technical gaps and bring sustainable community focused projects to market.

Background

Using funding provided through the New Jersey Economic Recovery Act of 2020 (“Economic Recovery Act”), the Program provides grants to qualified applicants of up to \$250,000 to create long-term strategic action plans to assist New Jersey’s Government Restricted Municipalities, Atlantic City, Paterson and Trenton-to maximize their growth potential and implement new or stalled community-focused economic growth projects.

The strategic action plans must embrace three major components:

- Analysis of municipal, business partner and community stakeholder plans
- Identification of catalytic community focused projects from analysis of existing plans
- Project review for technical planning gaps that have held these projects back from realization

Purpose

The Program grants will fund the design and submission of an action-oriented strategic plan that uses existing plans of the GRM, business partners and community stakeholders in multiple disciplines to identify both projects in existing planning documents and the technical capacity needs that have held those projects back from completion. Plans will comprise of an in-depth analysis of community planning activities from multiple stakeholders, project analysis and gap analysis of technical planning needs. The ultimate goal is the actualizing of community-focused economic growth projects via private or public capital attraction.

Project Timeline & Criteria

The Authority used a scoring process to award the grants. Applicants had 60 days from the date of application launch (July 14, 2021) to submit applications. Applications were accepted on a rolling basis and scored by an evaluation committee based on scoring criteria made publicly available in the application instructions, which were posted to the Authority's website.

The NJEDA received three (3) applications by the stated deadline:

- City of Atlantic City,
- City of Paterson
- City of Trenton

An evaluation committee ("the Committee") comprised of staff from Historic Preservation-Community Development, Diversity and Inclusion, Advanced Manufacturing-Economic Transformation and Policy/Data Analytics-Community Development. Applications were reviewed and scored after the deadline.

As part of its review and evaluation of the applications, the Committee considered a set of pre-established evaluation criteria, which included five (5) factors. The factors, and the maximum points associated with each, are listed here:

- 1) Demonstration of the plan's ability to achieve the substantive planning goals of as outlined in Scope of Work.
(20 points)
- 2) Demonstration of the ability to achieve the goal of a long term strategic action plan.
(20 points)
- 3) Demonstration of the ability to analyze multiple plans in order to find actionable items that will catalyze projects of merit.
(20 points)
- 4) Demonstration of an investment strategy within the strategic plan proposal.
(20 points)
- 5) Demonstration of a defined collaborative stakeholder engagement process and strategy.
(20 points)

Overview of Applications Recommended for Grant Award

Based on the scores assigned by the Committee, it was determined that three (3) applications should be recommended to the Members for approval as they achieved or exceeded the requisite overall evaluation criteria of 50 points on a scale of 0-100.

The following is a brief overview of the applications recommended for grant awards.

1) City of Atlantic City

Through its' Department of Planning, Atlantic City will leverage a rapid but thorough nationwide contract bid for a major planning & analysis partner. The dual focus of the plan will look at gaps that exist for current project development partners as well as identifying solutions that will increase the flow of outside capital.

2) City of Paterson

The City of Paterson, utilizing a City led integrated special project team, will focus their planning efforts on projects that are community based but lack planning and research to move to market. The City will also look at the needs around redevelopment areas, the need for a city-wide redevelopment plans and their impact on municipal and stakeholder projects.

3) City of Trenton

The City of Trenton will work with two core partners, Greater Trenton and New Jersey Future, who will conduct an in-depth assessment of economic opportunities based on city assets and market condition. The plan will report and examine the goals and measures for success of the City's progress to implementing its master plan in order to determine the City's ability to act strategically and take on a long-term planning approach, analyze strengths to be built from and existing gaps that could slow implementation, including internal systems, procedures, and capacity.

Recommendation

The Members are requested to approve Phase One Government Restricted Municipality (GRM) planning grants, of \$250,000 each to:

- The City of Atlantic City for Atlantic City
- The City of Trenton for Trenton
- The City of Paterson for Paterson



Prepared by John E. Costello

Attachments:

- Appendix A-Scoring Matrix

Appendix A-GRM Phase One-Scoring Matrix

| Applicant (GRM Community) | Average Total | Criteria #1 Identification of Project Purpose & Merits | Criteria #2 Ability to analyze multiple plans in order to find actionable items that will catalyze projects of merit. | Criteria #3 Demonstration of an investment strategy within the strategic plan proposal | Criteria #4 Ability to achieve the goal of a long term strategic action plan | Criteria #5 Demonstration of a defined collaborative stakeholder engagement process and strategy |
|--|----------------------|---|--|---|---|---|
| City of Atlantic City (Atlantic City) | 67.4 | 14.2 | 14.4 | 13 | 14.8 | 11 |
| City of Trenton (Trenton) | 59.8 | 11.2 | 12.6 | 10 | 13.8 | 12.2 |
| City of Paterson (Paterson) | 86 | 16.4 | 17.2 | 17.2 | 17.6 | 17.6 |



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: December 08, 2021

RE: NJ Arts and Innovation Festival Challenge Grant

Summary

In the 2021 State budget, the Authority was appropriated \$2 million for the “NJ Tech, Innovation, and Art Initiative,” the staff proposes a Challenge Grant program with the purpose to serve as seed funding to explore the possibility of bringing an innovative music and technology festival to New Jersey. The purpose of this memorandum is to ask the members to approve actions necessary to implement this initiative.

The Members are asked to approve:

1. The transfer of the appropriated \$2 million in funds into the Economic Recovery Fund (“ERF”).
2. As required under subsection (13) of the ERF Act (34:1B-7.13(a)(13)), the adoption of economic development priorities that will guide the expenditure of these funds
3. The creation of the New Jersey Arts and Innovation Festival Challenge Grant to make grant funding available for an arts and innovation festival in New Jersey featuring artists, technologists, creatives, entrepreneurs, researchers, and thought leaders to be held in Summer or Fall of 2022
4. Delegation to Authority staff (Chief Executive Officer or Chief Community Development Officer) to accept other governmental (Federal, State, County, Municipal, Independent Authority, Board or Commission) funding and/or unrestricted gifts or grants that would be used to fund New Jersey Arts and Innovation Festival Challenge Grant up to \$5,000,000

Overview

In line with Governor Murphy's Economic Plan for a stronger, fairer New Jersey economy and goal of establishing New Jersey as the State of Innovation, the New Jersey Economic Development Authority ("Authority", "EDA") will create and administer the NJ Arts and Innovation Festival Challenge Grant to support a festival in New Jersey highlighting creative arts and innovative technologies.

This funding will support an event planning entity's work to produce an arts and technology festival that will showcase the cutting edge of arts, technology, education, policy, research, and social impact that will be located in New Jersey. The festival will be a regional draw that will position New Jersey as a premier location for diverse creatives, entrepreneurs, and researchers to live, work, and play.

In accordance with the amendments to the Economic Recovery Fund Act in N.J.S.A § 34:1B-7.13(a)(13), this funding will provide grants directly to the grantee for the purpose of capitalizing an arts and innovation festival. The grant will grow New Jersey's innovation ecosystem and New Jersey's creative culture and help establish the state as a premier destination for "live, work, play" communities. The purpose is also consistent with the Fiscal Year 2022 Appropriations Act purpose of the funding.

The New Jersey Arts and Innovation Festival Challenge Grant funding, allocated in the FY 2022 Appropriations Act, will be transferred by Treasury to the Authority and, it is proposed that the funds will be assigned to the Economic Recovery Fund.. The assignment of the funds to the Economic Recovery Fund will allow the Authority to authorize a challenge grant as listed under N.J.S.A § 34:1B-7.13(a)(13) for the purposes of meeting stated economic priorities as identified by the Board and described in point one of this memorandum.

Economic Development Priorities- New Jersey Arts and Innovation Festival

At the meeting held on November 28, 2018, the NJEDA Board discussed Governor Murphy's Economic Plan ("Economic Plan"). This plan lays out the State's priorities for economic development. Specifically, the Economic Plan designates the following four economic development priorities:

1. Investing in people to help all New Jersey residents prepare for and find work that supports and sustains families and investments in our future.
2. Investing in communities to build world-class cities, towns, and infrastructure statewide.
3. Making New Jersey the State of Innovation to harness the power of innovation to create more and better jobs across the state.
4. Making government work better to improve New Jersey's competitiveness and business climate.

These priorities have been the basis for the NJEDA's work since 2018, including programs supporting small businesses, artists, and innovation economy companies. Through programs such as the Small Business Emergency Assistance Grant Program, The New Jersey Community

Stage Relief Grant Program, Sustain and Serve NJ, NJ Ignite, NJ Accelerate, the Film and Digital Media Tax Credit, and many others; the Authority has focused on assisting communities to create a positive and inclusive live/work/play environment that assists in attracting top tier talent and firms to locate business operations in New Jersey.

To facilitate the creation of the NJ Arts and Innovation Festival Challenge Grant and in accordance with ERF requirements (N.J.S.A § 34:1B-7.13(a)(13)) to adopt “economic development priorities as defined by the authority’s board,” Staff proposes that the Board approve adopting the four priorities outlined by Governor Murphy’s 2018 Economic Plan for the purposes of this ERF provision.

As amended on January 7, 2021, by the Economic Recovery Act of 2020 (ERA), this ERF provision allows the Authority to create within ERF “a fund to provide grants or competition prizes, either directly or through a not-for-profit entity, that is consistent with economic development priorities as defined by the authority’s board, where funds have been specifically allocated to the economic recovery fund for this purpose, including but not limited to an appropriation or transfer from another government entity.”

The NJ Arts and Innovation Festival Challenge Grant will work to directly meet two of the above priorities: investing in communities to build world-class cities, towns, and infrastructure statewide; and making New Jersey the State of Innovation to harness the power of innovation to create more and better jobs across the state. The Grant will support major investments in one or more New Jersey communities that will help establish them as premier live/work/play destinations and will grow the State’s ability to “harness the power of innovation to create more and better jobs across the state” by working to attract top tier businesses and talent in arts and innovation. The proposed grant program also looks to invest in New Jersey’s people by creating short term job opportunities in the Festival design, building and operations as well as increase long term sustainable and equitable job opportunities in New Jersey based arts and innovation firms, which may be attracted to the state by the proposed festival. The festival also looks to make New Jersey government work better by piloting programs that look at new and innovative ways to invest in communities, create jobs and spark innovation in New Jersey.

Background on NJ Arts and Innovation Festival Challenge Grant

The NJ Arts and Innovation Festival Grant will support the planning and execution of an arts and innovation festival.

The challenge grant will provide a single award of up to \$2,000,000 to a business or nonprofit with experience organizing large-scale events. The selected entity will use this funding, plus additional funds they raise independently of the EDA, to produce a festival to be held over two or more days with a proposed goal of holding the festival held in the Summer or Fall of 2022.

The funding source for the grant is an appropriation from the 2022 Appropriations Act which will be deposited into the Economic Recovery Fund

I. Grant Fund Uses

The Authority is seeking applications directly from businesses and nonprofit organizations. Application submissions must demonstrate professional experience in the management, production, and promoting of live events; a vision for an integrated arts and innovation festival; and the ability to fundraise or generate revenue necessary to cover any budgeted expenses above and beyond the \$2,000,000 provided by the EDA.

Applicants must submit documentation listing experience, including specific experience producing, directing and managing events in New Jersey; key team members; projected budget; projected funding plan; COVID-19 safety plan; diversity and inclusion plan, including a plan to partner with the host municipality or municipalities to provide free or subsidized tickets to residents of the host municipality or municipalities; and advertising/media plan. The applicant must submit a vision statement identifying programming, participants, and locations for the festival.

Applicants must provide a list of events where they acted as the leadership team and that they promoted, managed, and/or produced since 1/1/2014. This list must include the location, focus, components, participants, attendance, financials, and a summary of media coverage. In line with Governor Murphy and the EDA's goals of promoting New Jersey businesses and artists, applicants with experience organizing and managing events in New Jersey will be scored higher than those that have not organized events in the State.

Applicants must provide a vision statement which should illustrate:

- The applicant's concept for the festival;
- How the festival will promote New Jersey and our diverse communities as a premier location for top tier firms, entrepreneurs, talent, and families to live, learn, grow, work, and play; and
- How the applicant will promote the festival as a destination for arts and innovation centered travel and tourism.

All applications will be reviewed and voted on by an internal EDA committee with technical review from subject matter experts from within state government including but not limited to the State Council for the Arts, the Office of the Secretary of State, and the Office of Innovation in non-voting roles. Applications must meet or exceed the minimum score of 50 out of 100 to be eligible for recommendation to the Board for award. The highest score will be recommended to the Board for award of the grant.

The winner will be awarded up to \$2,000,000. Funds may be used for operational costs related to the management, production, and promotion of the festival as well as business analysis, civic engagement, engineering, architectural, environmental, scientific and media planning, research, and analysis related to the launch of a New Jersey centered arts and innovation festival. Applicants should be aware that depending on the location and scope of construction or installations, some work may be subject to prevailing wage and affirmative action requirements.

The first funds disbursement will be made after the execution of the grant by both parties.

In order to receive the first disbursement of funds, the grantee must provide documentation indicating the costs for booking the venue or venues for the event and the headlining artists, speakers, and other featured businesses or installations. The costs must be outlined in a spending plan as described in Section IV. Upon reaching satisfactory documentation, the NJEDA will provide funds for expenses up to \$500,000.

Subsequent disbursements of the remaining grant funding will be disbursed in increments of no less than \$100,000 and no greater than \$500,000 for operating costs incurred (but not necessarily paid) in the production of the festival not covered by the initial disbursements. Operating costs may include but is not limited to: contract fees, contract payments, venue and/or equipment deposits, inventory, supplies, salaries, costs related to professional services, costs related to governmental fees, utilities payments, and other customary costs related to operations and planning.. Applicants must provide contracts or other documents to the EDA that clearly denote the expense that has been incurred.

No disbursements will be made for permanent construction hard costs or property acquisition. Any construction in connection with or as necessary to conduct the festival shall be subject to prevailing wage based on a review of the specific construction and trades by staff in conjunction with the Department of Labor and Workforce Development.

The grantee must provide a monthly report on grant expenditures for the term of the grant. This will include, but is not limited to, a summary of activity related to festival operations, sales, fundraising, contracting, and implementation of the diversity and inclusion plan. Failure to meet negotiated milestones may cause suspension or termination of the grant.

The term of the grant is to be nine months from the date of execution with an extension of three months at the sole discretion of the Authority.

Following the second disbursement, the grantee may submit disbursement requests every other week for reimbursement of funds as shown in the disbursement section below.

The grantee may hire or subcontract with outside experts, firms, public interest research groups, government entities, and higher educational institutions and may consider any approach or combination of approaches to achieve the program goal of completing a New Jersey-based arts and innovation festival.

The grant agreement will provide that the failure to comply with the terms of the grant agreement and the program requirements will allow EDA to suspend future disbursements, terminate the agreement, and/or demand repayment of disbursed funds.

II. Eligible Applicants

Qualified applicants are defined as:

- for profit and nonprofit entities,
- registered for business in New Jersey or holding a valid NJ Charitable Registration,
- with demonstrated experience organizing and executing at least one (1) event with an attendance of 5,000 or more in the last 7 years,
- that meets additional criteria detailed below.

Applicants may only submit one application. The applicant will be the sole entity responsible for meeting the requirements of the grant agreement.

Applicants may add a strategic partner or partners whose experience, knowledge, skills and ability may provide an advantage in the production, management, and/or marketing of the festival. Strategic partners are distinct from contractors in that they may not be contracted for specific services, but instead will enter into agreements with the grant recipient to plan the festival and oversee spending of grant funds received. The strategic partnership must be recognized by a memorandum of understanding or a written agreement between the partner and the applicant and be included in the application. The strategic partner or partners' prior experience will be considered for the purposes of awarding the grant.

The applicant will have the sole responsibility in the grant agreement for assuring the compliance of partners with all terms and conditions of the program. The applicant will be the sole recipient of the grant. Entities may only submit one proposal as primary applicant but may be included as strategic partners on other applications or as contractor for grantees. Once included in the proposal, any named strategic partner or partners cannot be changed without the prior written consent of the Authority.

III. Application

All applications should propose an arts and innovation festival to be held in Summer or Fall 2022.

The Applicant shall provide:

- Proof of successful management, by applicant and/or strategic partner, of **at least one (1) event** that took place over **two (2) or more days** and included **at least three (3) of the elements listed below**. In order to achieve the highest possible score, applicants will need to provide proof of multiple events that they have managed with additional points being given to event hosted in New Jersey.
 - Live music performances or other live performances (i.e. poetry readings, speeches, plays)
 - Panel discussions
 - Keynote speakers of national significance (i.e. CEOs, political figures, award winning writers/performers/ researchers, advocacy champions, entrepreneurs)
 - Live tech demonstrations

- Trade shows
- Vision statement for NJ Arts and Innovation Festival that includes:
 - Proposed dates and locations
 - Proposed performers/speakers
 - Proposed plan for advertising/promotion
 - Proposed plan for partnering with host municipality/municipalities to provide free or subsidized tickets to residents of the host municipality/municipalities
 - COVID-19 safety plan
 - Diversity and inclusion statement
 - Security plan
 - Transportation/parking plan
- Proposed budget
- Key staff bios and resumes
- Strategic Partner or Partners, as needed
- Proposed key contractors, as needed
- Proposed plan (fundraising plan) to fund any budgeted amount in excess of the \$2,000,000 available through the NJEDA grant.

Submissions must contain, at a minimum, the required information identified below:

- Completed Application Information Form (Attachment A) and any additional information related to the Grant Fund Uses but not specifically requested on Attachment A, to be submitted with the Application.
- Completed Budget Estimate that demonstrates how the full project budget is being utilized. The budget must detail costs, which include, but are not limited to, labor costs, contract/technical services and support costs, and material costs. The budget must project out that the festival shall be executed within Summer or Fall 2022. The budget will be outlined in a budget schedule.
- Signed agreement that the entity assumes all liability for the event and will indemnify, defend and hold harmless EDA for any action during the Arts and Innovation Festival.
- Proof of ability to obtain appropriate insurance coverage as recommended by EDA's insurance broker in the form of a substantially similar insurance policy for an event the applicant has previously organized.
- Strategic Partnership Memoranda of Understanding or Agreement (if relevant)

IV. Disbursement

Grant disbursements by the Authority will *only* be made to the grantee. The grantee shall be responsible for assuring the compliance of any sub-contractors or strategic partners with all terms and conditions of the program and will assume the sole and absolute responsibility for any payments due to any sub-contractors or strategic partners pursuant to applicable laws.

The grantee will be required to provide comprehensive General Liability Insurance and other insurances against any liability of the Authority or its directors, trustees, employees, and agents in such amounts as recommended by EDA's insurance broker prior to the execution of the grant.

Funding will be disbursed as follows:

- 1) First Tranche – \$500,000 disbursed, post execution, within seven days of the receipt and approval of a spending plan for the initial disbursement of \$500,000. The spending plan must identify major cost centers and spending targets related to booking costs; operational costs; and any normal and customary costs associated with the planning, production, and management of the festival.
 - a. Booking costs are described as:
 - i. Funds required to secure contracts for the time and performance of individuals or groups who are identified by the grantee as major performers, presenters, or speakers at the proposed event.
 - ii. Funds required to secure contracts for use of a specific venue or venues, in a New Jersey municipality, where speaking events, arts, and/ innovation presentations, or artistic performance or support services will be held as part of the NJ Arts and Innovation Festival
 - b. Operating costs may include but is not limited to:
 - i. Contract fees, contract payments, venue and/or equipment deposits, inventory, supplies, salaries, costs related to professional services, costs related to governmental fees, utilities payments, and other customary costs related to operations.
 - c. Normal and Customary costs are costs associated with the production and management of the festival that may not be traditionally associated with operating costs.
- 2) Second Tranche – Remaining funds up to a total of \$1,500,000 to be disbursed in increments of no less than \$100,000 and no greater than \$500,000 for reimbursement of booking costs, operating costs, and normal and customary costs incurred in the production of the festival not covered by the initial disbursement.
 - a. The first disbursement of funds in the second tranche must be accompanied by an updated fundraising plan showing projected ticket sales, promotional financing, fees receivable, and any anticipated operating or non-operating revenue based on the confirmation of performers, presenters, speakers, or venues, on a monthly basis for the period leading to the event.

Prior to disbursement of the second tranche of grant funds, the grantee must submit a report detailing how the first tranche of the grant funding was spent and an updated budget for the remaining grant funds available.

In order to receive second tranche disbursements, the grantee must submit a disbursement request that includes:

- Summary of expenses to be funded with this disbursement.

- Summary of funds expended to date.
- Full and complete copies of invoices, bills, and/or contracts for the production of the festival not covered by the initial disbursement.

Operating costs may include but is not limited to: contract fees, contract payments, venue and/or equipment deposits, inventory, supplies, salaries, costs related to professional services, costs related to governmental fees, utilities payments, and other customary costs related to operations and planning. Invoices, bills, and/or contracts must identify the date of issuance, the date of the delivery of the good or service, a summary of the type of good or service, itemized total of quantity and cost of the good or service, total costs of the good or services purchased, and the individual or company from whom the good or service was purchased.

V. Evaluation/Scoring Criteria

Proposals will be reviewed and scored by staff of the Authority formed as a scoring committee. The scoring committee may utilize the advice of subject matter experts from both the Authority and other New Jersey state departments, agencies, councils, offices and boards in order to advise scoring decision. Proposals will be evaluated and scored on each of the criteria below.

For the purposes of this grant and to be considered for award of this grant, an application must achieve or exceed an overall score of fifty (50) with 100 being the highest rating and with a minimum scoring of at least one point in questions 2, 3, 4, 5 and 6.

The point scale is as follows for:

1. Past Experience (maximum 55 points). An application that does not include this section will be automatically disqualified and considered ineligible regardless of other materials provided.
 - a. Number of events since 1/1/2014 with attendance of 5,000 or more (4 points per event; maximum 20).
 - b. Number of events since 1/1/2014 with attendance of 1,000 or more that took place in New Jersey (2 points per event; maximum 10)
 - c. Elements of event(s). Element must be featured in at least one event the applicant organized. (5 points per element; maximum 25)
 - i. Live music
 - ii. Keynote speaker(s)
 - iii. Tech demonstrations
 - iv. Trade show(s)
 - v. Panel discussions

2. Vision Statement (up to 4 points each; maximum 20 points).
(An application that does not include this section will be automatically disqualified and considered ineligible regardless of other materials provided.)
- 1-2 points- Element is present/shows minimal efficacy towards goals/objectives attainment
- 3 points- Element is present/shows moderate efficacy towards goals/objectives attainment
- 4 points- Element is present/shows superior efficacy towards goals/objectives attainment
- Demonstrates effective plan to promote New Jersey as a destination for artists and creative businesses.
 - Demonstrates effective plan to promote New Jersey as a destination for innovation economy businesses and investors.
 - Demonstrates effective plan to attract tourists from throughout New Jersey and neighboring states.
 - Includes outreach plan that will generate local and national publicity.
 - Aligns with New Jersey's vision for stronger, fairer economic growth.
3. Fundraising Plan (10 points)- plan to raise all funds necessary to cover any budget items in excess of \$2,000,000.
(An application that does not include this section will be automatically disqualified and considered ineligible regardless of other materials provided.)
- 1-2 points- Element is present, shows minimal efficacy towards goal of raising at least \$1,000,000
- 3-7 points- Element is present, shows moderate efficacy towards goal of raising at least \$1,000,000.
- 8-10 points- Element is present, shows superior efficacy towards goal of raising at least \$1,000,000.
4. Includes plan to coordinate with host municipality or municipalities to provide free or subsidized tickets to residents of host municipality or municipalities (5 points).
(An application that does not include this section will be automatically disqualified and considered ineligible regardless of other materials provided.)
- 1-2 points- Element is present/shows minimal efficacy towards goals/objectives attainment
- 3-4 points- Element is present/shows moderate efficacy towards goals/objectives attainment
- 5 points- Element is present/shows superior efficacy towards goals/objectives attainment
5. Includes COVID-19 safety plan in compliance with all relevant executive orders, laws, and other guidelines applicable at the time of application (5 points).
(An application that does not include this section will be automatically disqualified and considered ineligible regardless of other materials provided.)
- 1-2 points- Element is present/shows minimal efficacy towards goals/objectives attainment

3-4 points- Element is present/shows moderate efficacy towards goals/objectives attainment

5 points- Element is present/shows superior efficacy towards goals/objectives attainment

6. Includes diversity and inclusion plan that sets forth strategies the applicant will implement related to hiring of minority persons and women across all staff, presenters, and performers (5 points).

(An application that does not include this section will be automatically disqualified and considered ineligible regardless of other materials provided.)

1-2 points- Element is present/shows minimal efficacy towards goals/objectives attainment

3-4 points- Element is present/shows moderate efficacy towards goals/objectives attainment

5 points- Element is present/shows superior efficacy towards goals/objectives attainment

VI. Additional Funding

Staff is also requesting delegated authority for the Chief Executive Officer or Chief Community Development Officer to accept governmental (Federal, State, county, municipal, independent authority, board or commission) funding and/or unrestricted gifts or grants, up to \$5,000,000, that would be used to fund New Jersey Arts and Innovation Festival.

Should governmental requirements required by law restrict the ability for the Authority to utilize any of the parameters described in the memo, staff will revisit the program requirements with the Board for modification and alignment with governmental requirements. If governmental requirements are in addition to parameters described in the memo, staff is seeking delegated authority to add these requirements.

VII. Fees

As listed in N.J.A.C. § 19:30-6.1, a non-refundable fee of \$1,000 shall accompany every application.

Recommendation

The Members are asked to approve:

1. The transfer of the appropriated \$2 million in funds into the Economic Recovery Fund (“ERF”).
2. As required under subsection (13) of the ERF Act (34:1B-7.13(a)(13)), the adoption of economic development priorities that will guide the expenditure of these funds

3. The creation of the New Jersey Arts and Innovation Festival Challenge Grant to make grant funding available for an arts and innovation festival in New Jersey featuring artists, technologists, creatives, entrepreneurs, researchers, and thought leaders
4. Delegation to Authority staff (Chief Executive Officer or Chief Community Development Officer) to accept other governmental (Federal, State, County, Municipal, Independent Authority, Board or Commission) funding and/or unrestricted gifts or grants that would be used to fund New Jersey Arts and Innovation Festival Challenge Grant up to \$5 million

A handwritten signature in blue ink, appearing to read 'T. Sullivan', is positioned above a horizontal line.

Tim Sullivan, CEO

Prepared by Jake McNichol and John E. Costello

Application Information Form-Attachment A
NJ Arts and Innovation Festival

A representative of the applicant must complete and return this Application Information Form as part of the application package. If the question is not applicable to the proposal, please indicate "Not Applicable".

If you need more space than the form allows, attach a separate sheet referencing the Applicant name and clearly identify the Section(s)

The Application Information Form must be completed and submitted in order for the proposal to be considered for a grant award.

SECTION I: GENERAL INFORMATION

APPLICANT CORPORATE NAME:

APPLICANT DBA:

APPLICANT ADDRESS:

APPLICANT WEBSITE:

APPLICANT E-MAIL ADDRESS:

APPLICANT CONTACT PHONE NUMBER:

STATE OF INCORPORATION:

If applicable, please list any other strategic partners participating on this proposal with corporate name and DBA, address, and contact information for a point of contact.

SECTION II: PROJECT DETAILS

1. Project Title

2. Past Project Details:

Please attach a narrative that describes the previous work on festival (s) or event(s) held after January 1, 2014 that you or your entity has produced and/or managed with the following information. In addition to the narrative, please

- Name of Event or Festival
- Dates of Event or Festival
- Location of Festival (Municipality and State/ Major Venues)
- Final Festival Attendance Totals
- Description of Elements. Be sure to indicate specifically if any of the following elements were included in an event.
 - Live music performances or other live performances (i.e. poetry readings, plays)
 - Panel discussions
 - Keynote speakers of national significance (i.e. CEOs, political figures, award winning writers/performers/ researchers, advocacy champions, entrepreneurs)
 - Live tech demonstrations
 - Trade show
 - Please describe focus of trade show

3. Vision Statement:

Please submit, as an attachment to your application, a vision statement for the NJ Arts and Innovation Festival.

The Vision Statement must include:

- Narrative detailing how proposed festival will:
 - promote New Jersey as a destination for artists and creative businesses.
 - promote New Jersey as a destination for innovation economy businesses and investors.
 - promote New Jersey as a destination for tourism.
 - Align with New Jersey's vision for stronger, fairer economic growth.
- Proposed dates and locations
- Proposed performers/speakers
- Proposed plan for advertising/promotion
- Proposed plan for partnering with host municipality/municipalities to provide free or subsidized tickets to residents of the host municipality/municipalities
- Proposed security and transportation plan

- Strategic Partner or Partners, as needed
- Proposed key contractors, as needed

4. Fundraising Plan

Please submit, as an attachment to your application, a fundraising plan that demonstrates how you plan to cover any costs not covered by the \$2 million provided by the NJEDA. The fundraising plan should include, at minimum, projected monthly income flows from key festival operations such as ticket sales, sponsorships, promotional fees and other projected operational revenue streams as well as revenue from non-operating streams such as debt financing and lines of credit.

5. Proposed Budget

Please submit a budget that details costs necessary to execute on the submitted Vision Statement. Costs detailed in the budget should include, but are not limited to, labor costs, contract/technical services and support costs, and material costs.

6. COVID-19 Safety Plan

- Please submit a COVID-19 safety plan that outlines practices that will be in place to align event operations with best public health practices and all relevant executive orders, laws, and other guidelines applicable at the time of application.

7. Diversity and Inclusion Plan

- Please submit a Diversity and Inclusion Plan to outlines strategies that will be implemented related to hiring of minority persons and women across all staff, presenters, and performers involved in the proposed event.

8. Valid New Jersey Business Registration Certificate or Valid New Jersey Charities Registration

NJ Arts and Innovation Festival Challenge Grant:

Program Specifications

December 8, 2021

| | |
|----------------------------|---|
| Funding Source | \$2,000,000 as listed in the Fiscal Year 2022 Appropriations Act and deposited into the Economic Recovery Fund |
| Program Purpose | Seed funding for an innovative music and technology festival based in New Jersey that will position State as a premier location for innovation and arts creatives, entrepreneurs, and researchers to live, work, and play |
| Eligible Applicants | <p>Any public or private entity, including all 501(c) non-profit organizations, that can demonstrate as applicable:</p> <ul style="list-style-type: none">• Registered for business in New Jersey or holding a valid NJ Charitable Registration,• Demonstrated experience organizing and executing at least one (1) event with an attendance of 5,000 or more in the last 7 years,• Applicants may add a strategic partner or partners whose experience, knowledge, skills and ability may provide an advantage in the production, management, and/or marketing of the festival.• Strategic partners are distinct from contractors in that they will not be contracted for specific services, but instead will partner with the grant recipient to plan the festival and oversee spending of grant funds received.• Strategic partnership must be recognized by a memorandum of understanding or a written agreement between the partner and the applicant and be included in the application.• Strategic partner or partners' prior experience will be considered for the purposes of awarding the grant. <p>Grant applications must also demonstrate, as part of the grant application, the following <u>requirements</u> are met by applicants:</p> <ul style="list-style-type: none">• Legal registration to do business in New Jersey, as evidenced by a NJ Business Registration Certificate• Good standing with the Department of Labor, with all decisions of good standing at the discretion of the Commissioner of the Department of Labor• Check against the Federal System for Award Management (SAM) to ensure entity is not debarred.• Satisfaction of the requirement by the New Jersey Division of Taxation with regard to taxes, which may be through a tax clearance certification or verification from the Division of Taxation that the restaurant is in good standing and does not have tax debts due to the State |

NJ Arts and Innovation Festival Challenge Grant:

Program Specifications

December 8, 2021

| | |
|---|--|
| | |
| Eligible Uses | <p>Grant funding can only be used for costs associated with a New Jersey Arts and Innovation Festival that are projected to be after the date of grant execution. These costs include:</p> <p>Booking costs:</p> <p>Funds required to secure contracts for the time and performance of individuals or groups who are identified by the grantee as major performers, presenters, or speakers at the proposed event or</p> <p>Funds required to secure contracts for use of a specific venue or venues, in a New Jersey municipality, where speaking events, arts, and/ innovation presentations, or artistic performance or support services will be held as part of the NJ Arts and Innovation Festival</p> <p>Operating costs:</p> <p>Contract fees, contract payments, venue and/or equipment deposits, inventory, supplies, salaries, costs related to professional services, costs related to governmental fees, utilities payments, and other customary costs related to operations.</p> <p>Normal and Customary costs:</p> <p>Costs associated with the production and management of the festival that may not be traditionally associated with operating costs.</p> |
| Application Process and Board Approval | <p>Applications must include the following:</p> <ol style="list-style-type: none">1. Project Title2. Past Project Details-a narrative that describes the previous work on festival (s) or event(s) held after January 1, 2014 that applicant entity has produced and/or managed with the following information. :<ul style="list-style-type: none">• Name of Event or Festival• Dates of Event or Festival• Location of Festival (Municipality and State/ Major Venues)• Final Festival Attendance Totals• Description of Elements.<ul style="list-style-type: none">-Live music performances or other live performances-Panel discussions |

NJ Arts and Innovation Festival Challenge Grant:

Program Specifications

December 8, 2021

- Keynote speakers of national significance
- Live tech demonstrations
- Trade show

3. Vision Statement:

The Vision Statement that must include the following points:

- Narrative detailing how proposed festival will:
 - promote New Jersey as a destination for artists and creative businesses.
 - promote New Jersey as a destination for innovation economy businesses
 - promote New Jersey as a destination for tourism.
 - aligns Align with New Jersey's vision for stronger, fairer economic growth.
- Proposed dates and locations
- Proposed performers/speakers
- Proposed plan for advertising/promotion
- Proposed plan for partnering with host municipality/municipalities to provide free or subsidized tickets to residents of the host municipality/municipalities
- Proposed security and transportation plan
- Strategic Partner or Partners, as needed
- Proposed key contractors, as needed

4. Fundraising Plan

- demonstrates plan to cover any costs not covered by the \$2 million must include, at minimum: projected monthly income flows from:
- key festival operations such as ticket sales, sponsorships, promotional fees
 -
 - other projected operational revenue streams
 - non-operating streams such as debt financing and lines of credit.

5. Proposed Budget

- costs necessary to execute on the submitted Vision Statement. Costs detailed in the budget should include, which include, but are not limited to, labor costs, contract/technical services and support costs, and material costs.

6. COVID-19 Safety Plan

NJ Arts and Innovation Festival Challenge Grant:

Program Specifications

December 8, 2021

-outlines practices that will be in place to align event operations with best public health practices and all relevant executive orders, laws, and other guidelines applicable at the time of application.

7. Diversity and Inclusion Plan
-strategies related to hiring of minority persons and women across all staff, presenters, and performers involved in the proposed event.
8. Valid New Jersey Business Registration Certificate or Valid New Jersey Charities Registration

Proposals will be evaluated by a cross-Authority Evaluation Committee whose voting members will be composed of Authority staff. Subject matter experts from other departments and authorities of State Government may be consulted to advise on scoring but will not score proposals.

Proposals will be evaluated and scored on each of the criteria below

1. Past Experience (maximum 55 points). An application that does not include this section will be automatically disqualified and considered ineligible regardless of other materials provided.
 - a. Number of events since 1/1/2014 with attendance of 5,000 or more (4 points per event; maximum 20).
 - b. Number of events since 1/1/2014 with attendance of 1,000 or more that took place in New Jersey (2 points per event; maximum 10)
 - c. Elements of event(s). Element must be featured in at least one event the applicant organized. (5 points per element; maximum 25)
 - i. Live music
 - ii. Keynote speaker(s)
 - iii. Tech demonstrations
 - iv. Trade show(s)
 - v. Panel discussions
2. Vision Statement (up to 4 points each; maximum 20 points). An application that does not include this section will be automatically disqualified and considered ineligible regardless of other materials provided.

NJ Arts and Innovation Festival Challenge Grant:

Program Specifications

December 8, 2021

- a. Demonstrates effective plan to promote New Jersey as a destination for artists and creative businesses.
 - b. Demonstrates effective plan to promote New Jersey as a destination for innovation economy businesses and investors.
 - c. Demonstrates effective plan to attract tourists from throughout New Jersey and neighboring states.
 - d. Includes outreach plan that will generate local and national publicity.
 - e. Aligns with New Jersey's vision for stronger, fairer economic growth.
3. Fundraising Plan (10 points)- plan to raise all funds necessary to cover any budget items in excess of \$2,000,000. An application that does not include this section will be automatically disqualified and considered ineligible regardless of other materials provided.
4. Includes plan to coordinate with host municipality or municipalities to provide free or subsidized tickets to residents of host municipality or municipalities (5 points).
5. Includes COVID-19 safety plan in compliance with all relevant executive orders, laws, and other guidelines applicable at the time of application (5 points).
6. Includes diversity and inclusion plan that sets forth strategies the applicant will implement related to hiring of minority persons and women across all staff, presenters, and performers (5 points)
- 7.

Applications must also include:

- Signed letter of agreement that the entity assumes all liability for the event and will indemnify, defend, and hold harmless EDA for any action during the Arts and Innovation Festival.
- Proof of ability to obtain appropriate insurance coverage as recommended by EDA's insurance broker in the form of a substantially similar insurance policy for an event the applicant has previously organized.

NJ Arts and Innovation Festival Challenge Grant:

Program Specifications

December 8, 2021

| | |
|-----------------------------|---|
| | <ul style="list-style-type: none">• Strategic Partnership Memoranda of Understanding or Agreement (if relevant). <p>For the purposes of this grant and to be considered for award of this grant, an application must achieve or exceed:</p> <ul style="list-style-type: none">• Overall score of fifty (50); with 100 being the highest rating• Applications that fail to include questions 2, 3, 4, 5, and 6 will be automatically disqualified and considered ineligible regardless of other materials provided |
| Grant Amount | One (1) grant totaling \$2,000,000 |
| Funding Disbursement | <p>Funding will be disbursed as follows:</p> <ol style="list-style-type: none">1) First Tranche – \$500,000 disbursed, post execution, within seven days of the receipt and approval of a spending plan for the initial disbursement of \$500,000. The spending plan must identify major cost centers and spending targets related to booking costs; operational costs; and any normal and customary costs associated with the planning, production, and management of the festival.<ol style="list-style-type: none">a. Booking costs are described as:<ol style="list-style-type: none">i. Funds required to secure contracts for the time and performance of individuals or groups who are identified by the grantee as major performers, presenters, or speakers at the proposed event.ii. Funds required to secure contracts for use of a specific venue or venues, in a New Jersey municipality, where speaking events, arts, and/ innovation presentations, or artistic performance or support services will be held as part of the NJ Arts and Innovation Festivalb. Operating costs may include but is not limited to:<ol style="list-style-type: none">i. Contract fees, contract payments, venue and/or equipment deposits, inventory, supplies, salaries, costs related to professional services, costs related to governmental fees, |

NJ Arts and Innovation Festival Challenge Grant:

Program Specifications

December 8, 2021

utilities payments, and other customary costs related to operations.

- c. Normal and Customary costs are costs associated with the production and management of the festival that may not be traditionally associated with operating costs.

- 2) Second Tranche – Remaining funds up to a total of \$1,500,000 to be disbursed in increments of no less than \$100,000 and no greater than \$500,000 for reimbursement of booking costs, operating costs, and normal and customary costs incurred in the production of the festival not covered by the initial disbursement.

- a. The first disbursement of funds in the second tranche must be accompanied by an updated fundraising plan showing projected ticket sales, promotional financing, fees receivable, and any anticipated operating or non-operating revenue based on the confirmation of performers, presenters, speakers, or venues, on a monthly basis for the period leading to the event.

- 3) All Second Tranche Disbursement requests must be accompanied by:
- a. Summary of expenses to be funded with this disbursement.
- b. Summary of funds expended to date.

Prior to receiving any Second Tranche disbursements, the grantee must submit a report detailing how the First Disbursement was spent and an updated budget for the remaining grant funds available.

In order to receive second tranche disbursements, the grantee must submit a disbursement request that includes:

- Summary of expenses to be funded with this disbursement.
- Summary of funds expended to date.
- Full and complete copies of invoices, bills, and/or contracts for the production of the festival not covered by the initial disbursement. Invoices,

NJ Arts and Innovation Festival Challenge Grant:

Program Specifications

December 8, 2021

| | |
|-------------|--|
| | bills, and/or contracts must identify the date of issuance, the date of the delivery of the good or service, a summary of the type of good or service, itemized total of quantity and cost of the good or service, total costs of the good or services purchased, and the individual or company from whom the good or service was purchased. |
| Fees | As listed in N.J.A.C. § 19:30-6.1, a non-refundable fee of \$1,000 shall accompany every application. |

ADOPTED
DEC 8 2021

Attachments

Resolution of the New Jersey Economic Development
Authority Regarding Approval of NJ Arts and Innovation
Festival Grant

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

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

NOW, THEREFORE, BE IT RESOLVED by the Members of the New Jersey Economic Development Authority as follows:

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

EXHIBIT

DATED: December 8, 2021



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: December 8, 2021

RE: 2020 Comprehensive Annual Report

Summary

The Members of the Board are requested to approve the Authority's comprehensive annual report for 2020, as required under N.J.S.A. 4:1B-4 and Executive Order No. 37 (2006).

Background

Pursuant to the Authority's enabling act (N.J.S.A. 4:1B-4), the Authority prepares and distributes an Annual Report of accomplishments and activities to support economic development in New Jersey. Beginning in 2006, in order to meet the requirements of Executive Order No. 37 (2006), the Annual Report is combined with the Authority's audited financial statements and serves as the NJEDA's comprehensive annual report.

The audited financial statements for the year ending December 31, 2020 were prepared pursuant to Generally Accepted Accounting Principles for a government entity. I am pleased to inform the Board that the independent accounting firm of PKF O'Connor Davies, LLP has issued an unmodified opinion with regard to the 2020 financial statements. Certification accompanying the financial statements has been executed by the Controller and the Chief Executive Officer that the Authority has followed its standards, procedures, and internal controls.

On November 23, 2021, per its Charter, as well as section 9 of Executive Order 122 (2004), the Audit Committee reviewed the 2020 audited financial statements, and considered the relevancy, accuracy and completeness of the information presented. Also pursuant to Executive Order 122 (2004), the independent auditor met with the Audit Committee, where it was reported that the financial audit resulted in no negative findings or internal control deficiencies.

Subsequent to the meetings and review, the Committee recommended that the comprehensive Annual Report be presented to the Board for approval.

Under Executive Order No. 37 (2006), the Authority is required to obtain approval of a comprehensive annual report from its Board of Directors. Upon approval, this report will be submitted to the Authorities' Unit, posted to the EDA website, and transmitted electronically to members of the Legislature.

Recommendation:

Authority staff has prepared the comprehensive annual report for 2020 as required under Executive Order No. 37 (2006) and recommends Members' approval in order to submit the report to the Governor's Authorities Unit, post to the Authority's website, and transmit to the Legislature.

A handwritten signature in blue ink, appearing to read 'T. Sullivan', is positioned above a horizontal line.

Tim Sullivan
Chief Executive Officer

2020 ANNUAL REPORT NARRATIVE & NON-COVID PROJECT LIST

<https://njeda.sharefile.com/d-s68937d8464304f7fbcfed16bb33212d2>

2020 COVID-19 PROJECT LIST

<https://njeda.sharefile.com/d-sd65407809c9b4afa8b210f32904df10e>

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
(A COMPONENT UNIT OF THE STATE OF NEW JERSEY)**

**FINANCIAL STATEMENTS AND
REQUIRED SUPPLEMENTARY INFORMATION**

YEAR ENDED DECEMBER 31, 2020

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Financial Statements

Year Ended December 31, 2020

Table of Contents

| | |
|---|----|
| Independent Auditors' Report..... | 1 |
| Management's Discussion and Analysis..... | 3 |
| Basic Financial Statements: | |
| Statements of Net Position | 13 |
| Statements of Revenues, Expenses and Changes in Net Position..... | 15 |
| Statements of Cash Flows..... | 16 |
| Statements of Fiduciary Net Position..... | 18 |
| Statements of Changes in Fiduciary Net Position..... | 19 |
| Notes to Financial Statements..... | 20 |
| Required Supplementary Information: | |
| Schedule of Changes in the Authority's Net OPEB Liability and Related Ratios..... | 62 |
| Schedule of the Authority's OPEB Contributions..... | 63 |
| Schedule of Investment Returns – Employee Benefit Trust..... | 64 |
| Notes to Schedule of the Authority's OPEB Contributions..... | 65 |
| Schedule of the Authority's Proportionate Share of the Net Pension Liability..... | 66 |
| Schedule of the Authority's Contributions to the Public Employees' Retirement System (PERS)..... | 67 |
| Notes to Schedule of the Authority's Contributions to the Public Employees' Retirement System (PERS)..... | 68 |

INDEPENDENT AUDITORS' REPORT

**Management and Members
of the New Jersey Economic Development Authority
Trenton, New Jersey**

Report on the Financial Statements

We have audited the accompanying financial statements of the business-type activities and fiduciary funds of the New Jersey Economic Development Authority (the "Authority"), a component unit of the State of New Jersey, as of and for the year ended December 31, 2020, and the related notes to the financial statements, which collectively comprise the Authority's basic financial statements as listed in the table of contents.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in conformity with accounting principles generally accepted in the United States of America. Management is also responsible for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free of material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

PKF O'CONNOR DAVIES, LLP
20 Commerce Drive, Suite 301, Cranford, NJ 07016 | Tel: 908.272.6200 | Fax: 908.272.2416 | www.pkfod.com

PKF O'Connor Davies, LLP is a member firm of the PKF International Limited network of legally independent firms and does not accept any responsibility or liability for the actions or inactions on the part of any other individual member firm or firms.

**Management and Members of
New Jersey Economic Development Authority
Trenton, New Jersey**
Page 2

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the business-type activities and fiduciary funds of the Authority as of December 31, 2020, and the changes in its financial position and its cash flows for the years then ended in conformity with U.S. generally accepted accounting principles.

Prior Period Financial Statements

The financial statements of the Authority as of December 31, 2019, were audited by other auditors whose report dated October 21, 2020, expressed an unmodified opinion on those statements in accordance with accounting principles generally accepted in the United States of America. In our opinion, the comparative information presented herein as of and for the year ended December 31, 2019, is consistent, in all material respects, with the audited financial statements from which it has been derived.

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that management's discussion and analysis, the schedule of changes in the Authority's net postemployment benefits other than pensions ("OPEB") liability, the schedule of investment returns, the schedule of the Authority's OPEB contributions, the schedule of the Authority's proportionate share of the net pension liability and the schedule of the Authority's contributions to the Public Employees' Retirement System ("PERS") as listed in the table of contents, be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board which considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

PKF O'Connor Davies, LLP

Cranford, New Jersey
November 24, 2021

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Management's Discussion and Analysis

Years Ended December 31, 2020 and 2019

This section of the New Jersey Economic Development Authority's ("Authority" or "NJEDA") annual financial report presents management's discussion and analysis of the Authority's financial performance during the fiscal years ended on December 31, 2020 and 2019. Please read it in conjunction with the Authority's financial statements and accompanying notes.

OVERVIEW OF THE FINANCIAL STATEMENTS

This annual financial report consists of three parts: Management's Discussion and Analysis, the basic financial statements, and required supplementary information. The Authority is a self-supporting entity and follows enterprise fund reporting; accordingly, the financial statements are presented using the economic resources measurement focus and the accrual basis of accounting. Enterprise fund statements offer short- and long-term financial information about the activities and operations of the Authority. These statements are presented in a manner similar to a private business engaged in such activities as real estate development, investment banking, commercial lending, construction management and consultation. While detailed sub-fund information is not presented, separate accounts are maintained for each program or project to control and manage money for particular purposes or to demonstrate that the Authority is properly using specific appropriations, grants and bond proceeds.

2020 FINANCIAL HIGHLIGHTS

- The Authority's total net position increased \$30.4 million (or 5.97%) due to receipt of Federal CARES Act funds for COVID-19 emergency assistance programs, all of which had not been disbursed before the end of the year.
- The net pension liability decreased \$1.5 million (or 3.65%) due to a change in the Authority's proportionate share of the State of New Jersey's net pension liability.
- Finance fees decreased \$2.5 million (or 34.4%) due largely to declining volume of activity in specific incentive programs the Authority administers and because of a general decline in program activity related to the COVID-19 pandemic.
- Other operating revenue decreased \$18.5 million (or 40.53%) as the Authority did not receive distributions from specific venture fund investments in which it is a limited partner as it had in the prior year.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Management's Discussion and Analysis

Years Ended December 31, 2020 and 2019

- Interest income from investments increased \$1.6 million (or 23.63%) due to trading of certain investments to take advantage of higher rates. Typically, the Authority would hold such investments to maturity.
- Federal appropriations increased \$241.6 million (or 1,135.8%), State appropriations increased \$31.6 million (or 251.2%) and program payments increased \$209.4 million (or 561.2%) due largely to the receipt and subsequent disbursement of CARES Act funds for business emergency assistance programs as well as increase in the volume of disbursements related to the Superstorm Sandy program and other State programs.

2019 FINANCIAL HIGHLIGHTS

- The Authority's total net position increased \$1.1 million (or 0.2%) as an increase in operating revenues were nearly offset by a decrease in nonoperating revenues.
- The net pension liability decreased \$4.5 million (or 9.8%) due to a change in the Authority's proportionate share of the State of New Jersey's net pension liability.
- Finance fees decreased \$2.9 million (or 28.2%) due largely to declining volume of activity in the Grow NJ and Economic Recovery & Growth incentive programs the Authority administers.
- Other operating revenue increased \$19.8 million (or 175.8%) as the Authority received distributions from specific venture fund investments in which it is a limited partner.
- Interest income from investments increased \$2.2 million (or 48.4%) due to an increase in interest rates, coupled with the maturity and roll-off of specific investments being replaced by similar investments at higher rates.
- Federal appropriations decreased \$3.0 million (or 88.44%), State appropriations decreased \$9.8 million (or 43.9%) and program payments decreased \$8.7 million (or 19.0%) due largely to the volume of disbursements declining within the Superstorm Sandy program and other State programs.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Management's Discussion and Analysis

Years Ended December 31, 2020 and 2019

FINANCIAL ANALYSIS OF THE AUTHORITY

Net Position. The following table summarizes the changes in Net Position at December 31, 2020, 2019 and 2018:

| | 2020 | 2019 | 2018 | % Increase/(Decrease) | |
|--------------------------------------|----------------|----------------|----------------|-----------------------|-----------|
| | | | | 2020/2019 | 2019/2018 |
| Assets: | | | | | |
| Other assets | \$ 583,610,627 | \$ 546,326,742 | \$ 517,908,736 | 6.8 % | 5.5% |
| Capital assets, net | 50,321,242 | 53,323,893 | 56,654,856 | (5.6)% | (5.9)% |
| Total assets | 633,931,869 | 599,650,635 | 574,563,592 | 5.7% | 4.4% |
| Deferred outflows of resources: | | | | | |
| Deferred outflow related to pension | 8,244,673 | 10,270,840 | 16,891,150 | (19.7)% | (39.2)% |
| Deferred outflow related to OPEB | | 118,214 | 1,868,724 | (100.0)% | (93.7)% |
| Total deferred outflows of resources | 8,244,673 | 10,389,054 | 18,759,874 | (20.6)% | (44.6)% |
| Liabilities: | | | | | |
| Current liabilities | 14,344,401 | 15,207,228 | 11,784,097 | (5.7)% | 29.0% |
| Net pension liability | 40,017,678 | 41,533,862 | 46,021,947 | (3.7)% | (9.8)% |
| Other noncurrent liabilities | 11,136,000 | 7,275,720 | 8,451,469 | 53.1% | (13.9)% |
| Total liabilities | 65,498,079 | 64,016,810 | 66,257,513 | 2.3% | (3.4)% |
| Deferred inflows of resources: | | | | | |
| Deferred inflow related to pension | 17,682,219 | 16,307,759 | 15,972,223 | 8.4% | 2.1% |
| Deferred inflow-OPEB | 19,775,859 | 20,856,517 | 3,356,627 | (5.2)% | 521.4% |
| Total deferred inflows of resources | 37,458,078 | 37,164,276 | 19,328,850 | 0.8% | 92.3% |
| Net position: | | | | | |
| Net investment in capital assets | 50,321,242 | 53,323,893 | 56,654,856 | (5.6)% | (5.9)% |
| Restricted | 31,401,070 | 35,304,801 | 34,125,434 | (11.1)% | 3.5% |
| Unrestricted | 457,498,073 | 420,229,909 | 416,956,813 | 8.9% | 0.8% |
| Total net position | \$ 539,220,385 | \$ 508,858,603 | \$ 507,737,103 | 6.0% | 0.2% |

During 2020, the Authority's combined net position increased by \$30.4 million due to:

| | |
|-------------------|--|
| \$ 20.5 Million | Federal CARES Act appropriations received for COVID-19 programs – net of disbursements |
| \$ (11.9) Million | Use of Authority funds for specific COVID-19 business emergency programs |
| \$ 14.0 Million | Net receipts from CDBG-Disaster Recovery funds for the Stronger NJ Business programs |

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Management's Discussion and Analysis

Years Ended December 31, 2020 and 2019

\$ 10.2 Million Petroleum Underground Storage Tank Program ("PUST") appropriations received – net of disbursements
\$ (4.1) Million Decline in Capital Assets from scheduled depreciation
\$ 1.7 Million Net receipts relating to other Authority programs

During 2019, the Authority's combined net position increased by \$1.1 million due to:

\$ 1.1 Million Hazardous Discharge Site Remediation Fund ("HDSRF") appropriations received – net of disbursements
\$ (3.3) Million Decline in Capital Assets from scheduled depreciation
\$ (0.4) Million Municipal Economic Recovery Initiative grant award payments
\$ 4.6 Million Net receipts from CDBG-Disaster Recovery funds for the Stronger NJ Business programs
\$ (3.5) Million Petroleum Underground Storage Tank Program ("PUST") disbursements – net of appropriations received
\$ 2.4 Million Net receipts relating to other Authority programs

Operating Activities. The Authority charges financing fees that may include an application fee, commitment fee, closing fee, document execution fee and an annual servicing fee. The Authority also charges an agency fee for the administration of financial programs for various government agencies; a program service fee for the administration of Authority programs that are service-provider based, rather than based on the exchange of assets such as the commercial lending program; and a real estate development fee for real estate activities undertaken on behalf of governmental entities and commercial enterprises. The Authority may also generate a return on investments in venture capital funds which invest, in whole or in part, in New Jersey based businesses. Interest income on investments, notes and intergovernmental obligations is recognized as earned. Grant revenue is earned when the Authority has complied with the terms and conditions of the grant agreements. The Authority also earns income from operating leases and interest income on lease revenue from capital lease financings. Late fees are charged to borrowers who are delinquent in their monthly loan payments. All forms of revenue accrue to the benefit of the program for which the underlying source of funds is utilized. The Authority considers all activity to be operating activities, except as described in the following section.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Management's Discussion and Analysis

Years Ended December 31, 2020 and 2019

Non-Operating Activities. The Authority earns interest on idle cash and investments and may derive income from the sale of capital assets, as well as the receipt of state and federal appropriations which are used to administer specific programs on behalf of the State of New Jersey, and which directly benefit New Jersey based businesses. The Authority considers this activity to be non-operating in nature.

The following table summarizes the changes in operating and non-operating activities between fiscal years 2020, 2019 and 2018:

| | 2020 | 2019 | 2018 | % Increase/(Decrease) 2020/2019 | 2019/2018 |
|---|----------------|----------------|----------------|------------------------------------|-----------|
| Operating revenues: | | | | | |
| Financing fees | \$ 4,785,032 | \$ 7,296,736 | \$ 10,158,909 | (34.4)% | (28.2)% |
| Lease revenue | 9,075,335 | 8,775,690 | 9,391,891 | 3.4% | (6.6)% |
| Interest income: | | | | | |
| Notes | 6,100,777 | 5,718,740 | 5,226,030 | 6.7% | 9.4% |
| Other | 11,948,098 | 31,114,103 | 11,281,138 | (61.6)% | 175.8% |
| Total operating revenues | 31,909,242 | 52,905,269 | 36,057,968 | (39.7)% | 46.7% |
| Operating expenses: | | | | | |
| Administrative expenses | 38,431,725 | 35,500,163 | 34,832,148 | 8.3% | 1.9% |
| Interest expense | 24,033 | - | 38,375 | 100.0% | (100.0)% |
| Depreciation | 4,103,579 | 4,426,939 | 5,180,660 | (7.3)% | (14.5)% |
| Loss provisions – net | 13,084,927 | 6,980,276 | 7,121,995 | 87.5% | (2.0)% |
| Program costs | 15,984,593 | 12,827,424 | 12,541,276 | 24.6% | 2.3% |
| Total operating expenses | 71,628,857 | 59,734,802 | 59,714,454 | 19.9% | 0.0% |
| Operating (loss) | (39,719,615) | (6,829,533) | (23,656,486) | 481.6% | (71.1)% |
| Nonoperating revenues and (expenses): | | | | | |
| Interest income – investments | 8,429,718 | 6,818,246 | 4,593,548 | 23.6% | 48.4% |
| State appropriations | 44,145,976 | 12,569,844 | 22,391,323 | 251.2% | (43.9)% |
| Program payments | (246,715,423) | (37,311,816) | (46,047,970) | 561.2% | (19.0)% |
| Federal appropriations | 262,821,945 | 21,266,933 | 39,097,632 | 1135.8% | (45.6)% |
| Gain on sale of assets | - | - | 217,110 | 0.0% | (100.0)% |
| Other revenue (expense) | 1,399,181 | 4,607,826 | 645,314 | (69.6)% | 614.0% |
| Total nonoperating revenues and (expenses), net | 70,081,397 | 7,951,033 | 20,896,957 | 781.4% | (62.0)% |
| Change in net position | 30,361,782 | 1,121,500 | (2,759,529) | 2607.2% | (140.6)% |
| Beginning net position | 508,858,603 | 507,737,103 | 510,496,632 | | |
| Ending net position | \$ 539,220,385 | \$ 508,858,603 | \$ 507,737,103 | | |

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Management's Discussion and Analysis

Years Ended December 31, 2020 and 2019

Operating Revenues

In 2020, the Authority's operating revenues declined from the prior year due largely to a decrease in distributions from specific venture fund investments in which the Authority is a limited partner. These distributions are unpredictable from year to year. In addition, finance fees decreased by \$2.5 million due to a decline in the volume of activity as a result of the COVID-19 pandemic.

In 2019, the Authority's operating revenues were favorably impacted by an increase in distributions from specific venture fund investments in which the Authority is a limited partner. Such distributions totaled \$19.9 million. This was offset by a decrease in finance fees of \$2.9 million due to a decline in the volume of activity for specific incentive programs.

Operating Expenses

In 2020, total operating expenses increased as a result of the Authority's response to the COVID-19 pandemic. Loss provisions expense increased as a result of new emergency response loan and guarantee initiatives, while administrative expenses and program costs increased due to additional staff and related costs needed to stand up and deploy these new initiatives.

In 2019, total operating expenses were level, due largely to a decrease in the Authority's proportionate share of the State's pension liability which was partially offset by an increase in program costs related to economic development strategy planning for the Authority, as well as disbursements to businesses for new initiatives. Additional costs were incurred related to the remediation and reuse of parcels of land located at the former Fort Monmouth military base.

Non-Operating Revenues and Expenses – Net

In 2020, non-operating revenues and expenses – net, increased by \$62.1 million, due to the timing of receipts and disbursements of federal CARES Act funding related to the COVID-19 pandemic, as well as for the Stronger NJ Business programs.

In 2019, non-operating revenues and expenses – net, decreased by \$12.9 million, although still remained as net revenue, as federal appropriations related to the administration of the Stronger NJ Business programs declined by \$17.8 million, due to declining program volume. This was partially offset by an increase of \$2.2 million in interest income on cash and investments.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Management's Discussion and Analysis

Years Ended December 31, 2020 and 2019

Allowance for Credit Losses

Allowances for doubtful notes and guarantee payments are determined in accordance with guidelines established by the Office of the Comptroller of the Currency. The Authority accounts for its potential loss exposure through the use of risk ratings. These specifically assigned risk ratings are updated to account for changes in financial condition of the borrower or guarantor, delinquent payment history, loan covenant violations, and changing economic conditions. The assigned risk rating classifications are consistent with the ratings used by the Office of the Comptroller of the Currency. Each risk rating is assigned a specific loss factor in accordance with the severity of the classification. Each month an analysis is prepared using the current loan balances, existing exposure on guarantees, and the assigned risk rating to determine the adequacy of the reserve. Any adjustments needed to adequately provide for potential credit losses (recoveries) are reported as a Loss Provision (Recovery).

The following table summarizes the Loan Allowance activity for the end of the period from December 31, 2018 through December 31, 2020:

| | | |
|--------------------------------------|--------------|----------------------|
| 2018 Provision for credit losses-net | \$ 5,985,375 | |
| 2018 Write-offs | (3,402,424) | \$ 2,582,951 |
| December 31, 2018 | | |
| Allowance for loan losses | 28,316,644 | |
| Accrued guarantee losses | 427,609 | |
| Total allowance | | 28,744,253 |
| 2019 Provision for credit losses-net | 6,368,872 | |
| 2019 Write-offs | (2,727,236) | 3,641,636 |
| December 31, 2019 | | |
| Allowance for loan losses | 32,129,189 | |
| Accrued guarantee losses | 256,700 | |
| Total allowance | | 32,385,889 |
| 2020 Provision for credit losses-net | 11,889,388 | |
| 2020 Write-offs | (5,538,442) | 6,350,946 |
| December 31, 2020 | | |
| Allowance for loan losses | 34,226,582 | |
| Accrued guarantee losses | 4,510,253 | |
| Total allowance | | <u>\$ 38,736,835</u> |

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Management's Discussion and Analysis

Years Ended December 31, 2020 and 2019

When management determines that the probability of collection is less than 50% of the remaining balance, it is the policy to assign a loss rating to the account. For an account rated as loss, a loss provision is recognized for the entire loan balance.

Loans are written-off against the loss allowance when it is determined that the probability of collection within the near term is remote. The recognition of a loss does not automatically release the borrower from the obligation to pay the debt. Should the borrower, guarantors, or collateral position improve in the future, any and all steps necessary to preserve the right to collect these obligations will be taken.

Aggregate gross loan and guarantee exposure at December 31, 2020 was \$246,364,586, of which \$233,224,548 or 95% is for loans and \$13,120,038 for issued loan guarantees.

Aggregate gross loan and guarantee exposure at December 31, 2019 was \$226,967,280, of which \$223,024,680 or 98% is for loans and \$3,942,600 for issued loan guarantees.

At December 31, 2020, the Authority maintained a Credit Loss Allowance of \$38,736,835 or 15.7% of total exposure to cover potential losses in the loan and guaranty portfolio. Total write-offs for the year ended December 31, 2020, were \$5,538,442 or 2.2% of the loan and guaranty exposure.

At December 31, 2019, the Authority maintained a Credit Loss Allowance of \$32,385,889 or 14.3% of total exposure to cover potential losses in the loan and guaranty portfolio. Total write-offs for the year ended December 31, 2019, were \$2,727,236 or 1.2% of the loan and guaranty exposure. The Authority is a limited partner in various early stage venture funds with the purpose of providing venture capital to exceptionally talented entrepreneurs to facilitate the growth of these companies. These investments are accounted for using the cost basis as they do not have a readily determinable market value. The Authority will establish a valuation allowance for these investments when they determine through a series of events that an other-than-temporary decrease in value has occurred.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Management's Discussion and Analysis

Years Ended December 31, 2020 and 2019

The 2020 Loss Provisions – Net, of \$12.4 million, are related to the following detailed information:

| | |
|---------------|---|
| \$ 11,889,388 | Loan and Guarantee Program activity |
| \$ 502,487 | Venture Capital Funds and Capital Investments |

The 2019 Loss Provisions – Net, of \$6.5 million, are related to the following detailed information:

| | |
|--------------|---|
| \$ 6,368,872 | Loan and Guarantee Program activity |
| \$ 170,680 | Venture Capital Funds and Capital Investments |

CAPITAL ASSET AND DEBT ADMINISTRATION

Capital Assets. The Authority independently, or in cooperation with a private or governmental entity, acquires, invests in and/or develops vacant industrial sites, existing facilities, unimproved land, equipment and other real estate for private or governmental use. Sites developed, and equipment purchased for private use are marketed or leased to businesses that will create new job opportunities and tax ratables for the municipalities. Sites are developed for governmental use for a fee and also may be leased to the State or State entities. For the majority of these leases, future minimum lease rental payments are equal to the debt service payments related to the bonds or notes issued for the applicable property.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Management's Discussion and Analysis

Years Ended December 31, 2020 and 2019

The following table summarizes the change in Capital Assets-Net between fiscal year 2020, 2019 and 2018:

| | 2020 | 2019 | 2018 | % Increase/(Decrease) 2020/2019 | 2019/2018 |
|--------------------------------------|---------------|---------------|---------------|------------------------------------|-----------|
| Land | \$ 28,818,065 | \$ 28,818,065 | \$ 28,818,065 | 0.0% | (0.0)% |
| Construction in progress | 800,253 | – | – | 100.0% | 0.0% |
| Total non-depreciable capital assets | 29,618,318 | 28,818,065 | 28,818,065 | 2.8% | 0.0% |
| Building | 81,722,446 | 81,722,446 | 81,722,446 | 0.0% | 0.0% |
| Leasehold improvements | 36,607,308 | 36,306,634 | 35,210,658 | 0.8% | 3.1% |
| Total depreciable capital assets | 118,329,754 | 118,029,080 | 116,933,104 | 0.3% | 0.9% |
| Less accumulated depreciation | (97,626,830) | (93,523,252) | (89,096,313) | 4.4% | 5.0% |
| Capital assets – net | \$ 50,321,242 | \$ 53,323,893 | \$ 56,654,856 | (5.6)% | (5.9)% |

More detailed information about the Authority's capital assets is presented in the Notes to the financial statements.

Capital Debt. At year end, the Authority had no gross note principal outstanding; unchanged from the prior year.

CONTACTING THE AUTHORITY'S FINANCIAL MANAGEMENT

This financial report is designed to provide New Jersey citizens, and our customers, clients, investors and creditors, with a general overview of the Authority's finances and to demonstrate the Authority's accountability for the appropriations and grants that it receives. If you have questions about this report or need additional information, contact Customer Care at (609) 858-6700, CustomerCare@njeda.com, NJEDA, P.O. Box 990, Trenton, NJ 08625-0990, or visit our web site at: www.njeda.com.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Statements of Net Position

| | December 31 | |
|--|---------------|---------------|
| | 2020 | 2019 |
| Assets | | |
| Current assets: | | |
| Cash and cash equivalents – restricted | \$ 69,902,711 | \$ 47,347,369 |
| Cash and cash equivalents – unrestricted | 90,794,025 | 27,939,877 |
| Investments | 30,304,002 | 51,919,603 |
| Receivables: | | |
| Notes | 28,570,645 | 17,043,315 |
| Accrued interest on notes | 807,122 | 168,999 |
| Accrued interest on investments | 945,445 | 1,221,274 |
| Leases | - | 100,000 |
| Other receivables | 3,120,851 | 2,033,737 |
| Total receivables | 33,444,063 | 20,567,325 |
| Pre-pays and other current assets | 365,148 | 1,184,752 |
| Total current assets | 224,809,949 | 148,958,926 |
| Noncurrent assets: | | |
| Investments – unrestricted | 155,544,773 | 185,989,814 |
| Venture capital partnerships | 10,306,149 | 9,520,862 |
| Receivables: | | |
| Notes | 204,673,904 | 205,980,967 |
| Accrued interest on notes | 438,206 | 480,511 |
| Unamortized discount | (419,386) | (171,518) |
| Total notes receivables | 204,692,724 | 206,289,960 |
| Allowance for doubtful notes | (34,226,582) | (32,129,189) |
| Net notes receivable | 170,466,142 | 174,160,771 |
| Leases receivable, net | - | 6,829,088 |
| Total receivables | 170,466,142 | 180,989,859 |
| Net other postemployment benefits asset | 22,002,971 | 20,336,444 |
| Pre-pays and other noncurrent assets | 480,643 | 530,837 |
| Non-depreciable capital assets | 29,618,318 | 28,818,065 |
| Depreciable capital assets, net | 20,702,924 | 24,505,828 |
| Total capital assets, net | 50,321,242 | 53,323,893 |
| Total noncurrent assets | 409,121,920 | 450,691,709 |
| Total assets | 633,931,869 | 599,650,635 |
| Deferred outflows of resources | | |
| Deferred outflows from pension | 8,244,673 | 10,270,840 |
| Deferred outflows from OPEB | - | 118,214 |
| Total deferred outflows of resources | 8,244,673 | 10,389,054 |

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Statements of Net Position (continued)

| | December 31 | |
|---|----------------------|-----------------------|
| | 2020 | 2019 |
| Liabilities | | |
| Current liabilities: | | |
| Accrued liabilities | \$ 8,534,922 | \$ 10,943,949 |
| Unearned lease revenues | 1,195,619 | 1,217,416 |
| Escrow deposits | 4,613,860 | 3,045,863 |
| Total current liabilities | <u>14,344,401</u> | <u>15,207,228</u> |
| Noncurrent liabilities: | | |
| Net pension liability | 40,017,678 | 41,533,862 |
| Unearned lease revenues | 4,742,315 | 5,797,162 |
| Accrued guarantee losses | 4,510,253 | 256,700 |
| Compensated absences | 1,883,432 | 1,221,858 |
| Total noncurrent liabilities | <u>51,153,678</u> | <u>48,809,582</u> |
| Total liabilities | <u>65,498,079</u> | <u>64,016,810</u> |
| Deferred inflows of resources | | |
| Deferred inflows from pension | 17,682,219 | 16,307,759 |
| Deferred inflows from OPEB | 19,775,859 | 20,856,517 |
| Total deferred inflows of resources | <u>37,458,078</u> | <u>37,164,276</u> |
| Net position | | |
| Net investment in capital assets | 50,321,242 | 53,323,893 |
| Restricted by Federal and State agreement | 31,401,070 | 35,304,801 |
| Unrestricted | 457,498,073 | 420,229,909 |
| Total net position | <u>\$539,220,385</u> | <u>\$ 508,858,603</u> |

See accompanying notes.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Statements of Revenues, Expenses and Changes in Net Position

| | Year Ended December 31 | |
|--|-------------------------------|-----------------------|
| | 2020 | 2019 |
| Operating revenues | | |
| Financing fees | \$ 4,785,032 | \$ 7,296,736 |
| Interest income – notes | 6,100,777 | 5,718,740 |
| Financing lease revenue | - | 119,014 |
| Operating lease revenue | 9,075,335 | 8,656,676 |
| Agency fees | 1,808,818 | 1,961,659 |
| Program services | 3,661,088 | 3,200,313 |
| Real estate development | 4,891,197 | 2,479,400 |
| Distributions and warrants | 1,191,805 | 20,053,568 |
| Other | 395,190 | 3,419,163 |
| Total operating revenue | <u>31,909,242</u> | <u>52,905,269</u> |
| Operating expenses | | |
| Salaries and benefits | 30,257,483 | 29,833,726 |
| General and administrative | 8,174,242 | 5,666,437 |
| Interest | 24,033 | - |
| Program costs | 15,984,593 | 12,827,424 |
| Depreciation | 4,103,579 | 4,426,939 |
| Loss provisions – net | 13,084,927 | 6,980,276 |
| Total operating expenses | <u>71,628,857</u> | <u>59,734,802</u> |
| Operating loss | <u>(39,719,615)</u> | <u>(6,829,533)</u> |
| Nonoperating revenues (expenses) | | |
| Interest income – investments | 8,429,718 | 6,818,246 |
| Unrealized gain on investment securities | 1,399,181 | 4,607,826 |
| State appropriations | 44,145,976 | 12,569,844 |
| Federal appropriations | 262,821,945 | 21,266,933 |
| Program payments | (246,715,423) | (37,311,816) |
| Nonoperating revenues (expenses) – net | <u>70,081,397</u> | <u>7,951,033</u> |
| Change in net position | 30,361,782 | 1,121,500 |
| Net position – beginning of year | 508,858,603 | 507,737,103 |
| Net position – end of year | <u>\$ 539,220,385</u> | <u>\$ 508,858,603</u> |

See accompanying notes.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Statements of Cash Flows

| | Year Ended December 31 | |
|---|------------------------|---------------|
| | 2020 | 2019 |
| Cash flows from operating activities | | |
| Cash receipts from financing fees | \$ 4,785,032 | \$ 8,912,159 |
| Interest from notes | 5,217,144 | 5,086,737 |
| Lease rents | 14,459,297 | 8,224,157 |
| Agency fees | 1,624,079 | 1,962,191 |
| Program services | 3,919,753 | 6,576,913 |
| Real estate development | 4,818,764 | 2,388,192 |
| General and administrative expenses paid | (37,670,924) | (34,642,655) |
| Program costs paid | (13,695,646) | (12,954,792) |
| Collection of notes receivable | 21,895,294 | 24,477,952 |
| Loans disbursed | (37,720,605) | (35,296,463) |
| Deposits received | 45,744,685 | 7,779,758 |
| Deposits released | (44,176,688) | (8,307,136) |
| Net cash used in operating activities | (30,799,815) | (25,792,987) |
| Cash flows from noncapital financing activities | | |
| Interest paid on notes and revenue bonds | (24,033) | - |
| Appropriations received | 307,043,334 | 33,494,722 |
| Program payments | (251,915,874) | (33,059,981) |
| Net cash provided by noncapital financing activities | 55,103,427 | 434,741 |
| Cash flows from capital and related financing activities | | |
| Purchase of capital assets | (1,100,928) | (1,095,976) |
| Net cash used in capital and related financing activities | (1,100,928) | (1,095,976) |
| Cash flows from investing activities | | |
| Interest from investments | 8,705,548 | 6,719,080 |
| Return on capital investments | (95,970) | 19,560,663 |
| Purchase of investments | (9,942,885) | (7,861,106) |
| Proceeds from sales and maturities of investments | 63,540,113 | 1,248,509 |
| Net cash provided by investing activities | 62,206,806 | 19,667,146 |
| Net increase (decrease) in cash and cash equivalents | 85,409,490 | (6,787,076) |
| Cash and cash equivalents – beginning of year | 75,287,246 | 82,074,322 |
| Cash and cash equivalents – end of year | \$ 160,696,736 | \$ 75,287,246 |

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Statements of Cash Flows (continued)

| | Year Ended December 31 | |
|---|------------------------|------------------------|
| | 2020 | 2019 |
| Reconciliation of operating loss to net cash used in operating activities | | |
| Operating loss | \$ (39,719,615) | \$ (6,829,533) |
| Adjustments to reconcile operating loss to net cash used in operating activities: | | |
| Loss provisions-net | 13,084,429 | 6,980,276 |
| Depreciation | 4,103,579 | 4,426,939 |
| Amortization of discounts | (540,515) | (458,385) |
| Cash provided by nonoperating activities | 24,033 | - |
| Change in assets and liabilities: | | |
| Notes receivables | (15,758,709) | (16,824,748) |
| Accrued interest receivables-notes | (596,490) | 5,353,606 |
| Lease payment receivables | 7,048,102 | 100,000 |
| Other receivables | (726,112) | 1,588,677 |
| Pre-pays and other noncurrent assets | 814,980 | (238,825) |
| Capital investments | (1,191,805) | (20,053,568) |
| Accrued liabilities | 2,208,616 | 1,622,639 |
| Unearned lease revenues | (1,076,645) | (1,107,721) |
| Deposits | 1,567,997 | (527,378) |
| Other liabilities | (41,060) | 175,064 |
| Net cash used in operating activities | <u>\$ (30,799,815)</u> | <u>\$ (25,792,987)</u> |
| Noncash investing activities | | |
| Unrealized gain in investment securities | <u>\$ 1,399,181</u> | <u>\$ 4,607,826</u> |

See accompanying notes.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Employee Benefit Trust

Statements of Fiduciary Net Position

| | December 31 | |
|---|----------------------|----------------------|
| | 2020 | 2019 |
| Assets | | |
| Cash and cash equivalents | \$ 7,955,069 | \$ 6,643,063 |
| Investments: | | |
| U.S. Treasury securities | 9,884,820 | 11,418,747 |
| U.S. Agency securities | 4,273,739 | 2,383,599 |
| Corporate bonds | 13,929,015 | 12,838,420 |
| Certificate of deposit | 200,525 | 506,854 |
| Municipal bonds | 1,054,998 | 1,560,865 |
| Total fixed income | 37,298,166 | 35,351,548 |
| Equities | 6,877,448 | 5,725,093 |
| Total investments | 44,175,614 | 41,076,641 |
| Accrued interest receivable | 161,051 | 189,787 |
| Total assets | 44,336,665 | 41,266,428 |
| Liabilities | | |
| Accounts payable and accrued expenses | 8,000 | 18,029 |
| Total liabilities | 8,000 | 18,029 |
| Net position-restricted for OPEB | \$ 44,328,665 | \$ 41,248,399 |

See accompanying notes.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Employee Benefit Trust

Statements of Changes in Fiduciary Net Position

| | Year Ended December 31 | |
|---|-------------------------------|-----------------------------|
| | 2020 | 2019 |
| Additions | | |
| Employer contributions | \$ 448,747 | \$ 420,225 |
| Total contributions | <u>448,747</u> | <u>420,225</u> |
| Investment income: | | |
| Interest and dividends | 854,450 | 890,745 |
| Net increase in fair value of investments | <u>2,237,116</u> | <u>2,433,759</u> |
| Net investment income | <u>3,091,566</u> | <u>3,324,504</u> |
| Total additions | <u>3,540,313</u> | <u>3,744,729</u> |
| Deductions | | |
| Insurance premiums | 448,747 | 420,225 |
| Administrative expense | 8,000 | 17,762 |
| Other fees | <u>3,300</u> | <u>3,300</u> |
| Total deductions | <u>460,047</u> | <u>441,287</u> |
| Net increase in Fiduciary Net Position | <u>3,080,266</u> | <u>3,303,442</u> |
| Net position – restricted for OPEB | | |
| Beginning of year | 41,248,399 | 37,944,957 |
| End of year | <u><u>\$ 44,328,665</u></u> | <u><u>\$ 41,248,399</u></u> |

See accompanying notes.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements

December 31, 2020 and 2019

Note 1: Nature of the Authority

The New Jersey Economic Development Authority (“Authority”) is a public body corporate and politic, constituting an instrumentality and component unit of the State of New Jersey (“State”). The Authority was established by Chapter 80, P.L. 1974 (“Act”) on August 7, 1974, as amended and supplemented, primarily to provide financial assistance to companies for the purpose of maintaining and expanding employment opportunities in the State and increasing tax rates in underserved communities. The Act prohibits the Authority from obligating the credit of the State in any manner. The Authority assists for-profit and non-profit enterprises with access to capital and primarily offers the following products and services:

(a) Bond Financing

The Authority issues tax-exempt private activity bonds and taxable bonds. The proceeds from these single issue or composite series bonds are used to provide long-term, below-market interest loans to eligible entities, which include certain 501(c)(3) nonprofit organizations, manufacturers, exempt public facilities, solid waste facilities, and local, county, and State governmental agencies for capital improvements including real estate acquisition, equipment, machinery, building construction and renovations. All such bonds are special conduit debt obligations of the Authority, are payable solely from the revenues pledged with respect to the issue, and do not constitute an obligation against the general credit of the Authority.

(b) Loans/Guarantees/Investments and Tax Incentives

The Authority directly provides loans, loan participations, loan guarantees and line of credit guarantees to for-profit and not-for-profit enterprises for various purposes to include: the acquisition of fixed assets; building construction and renovation; financing for working capital; technological development; and infrastructure improvements. The Authority also may provide financial assistance in the form of convertible debt and take an equity position in technology and life sciences companies through warrant options. In addition to lending and investing its own financial resources, the Authority administers several business growth programs supported through State appropriation/allocation, including the technology business tax certificate transfer program, the angel investor tax credit program, tax credits for film industry and digital media projects, job creation and retention incentive grants and tax credits, tax credits for capital investment in urban areas, and reimbursement grants based on incremental revenues generated by redevelopment projects. Other state mandated programs include loans/grants to support hazardous discharge site remediation and petroleum underground storage tank remediation.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

(c) Real Estate Development

The Authority independently, or in cooperation with a private or another governmental entity, acquires, invests in and/or develops vacant industrial sites, existing facilities, unimproved land, equipment and other real estate for private or governmental use. Sites developed, and equipment purchased for private use are marketed or leased to businesses that will create new job opportunities and tax ratables for municipalities. Sites are developed for governmental use for a fee and also may be leased to the State or State entities.

(d) Stronger NJ Business Programs

In 2013, the Authority was awarded a sub-grant from the New Jersey Department of Community Affairs for the purpose of administering a portion of the State's Community Development Block Grant Disaster Recovery allocation to support the recovery of businesses impacted by Superstorm Sandy. To achieve this, the Authority may provide grants and loans to eligible businesses, as well as financial assistance to governmental entities to support community development, neighborhood revitalization and other public improvement projects.

(e) COVID-19 Emergency Response Programs

In 2020, the Authority was awarded a sub-grant from the New Jersey Department of Treasury for the purpose of administering a portion of the State's federal CARES Act allocation to support the recovery of businesses and economic disruptions caused by the COVID-19 pandemic. To achieve this, the Authority may provide grants, loans and guarantees to eligible businesses, to support emergency response programs aimed at stabilizing the state's economy.

(f) New Jersey Economic Development Authority Employee Benefit Trust

In 1988, the New Jersey Economic Development Authority ("Authority") established a single-employer post-employment defined benefit healthcare plan ("Plan") whereby the Authority provides the full cost of group health insurance and prescription coverage to those retirees and surviving spouses (and qualifying dependents) who have retired under the Authority's retirement system.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

In October 2006, the Authority created the Employee Benefits Trust (“Trust”), an irrevocable trust to fund its Plan obligations. In no event shall any part of the principal or income of the Trust be paid or revert back to the Authority or be used for any purpose whatsoever other than for the exclusive benefit of retirees and their beneficiaries as defined by the Members of the Authority (the “Board”). No part of the assets of the Trust may inure to the exclusive benefit of any retiree or beneficiary other than by benefit payments for services provided in the administration of the Trust.

The State has the authority to establish and amend the benefit provisions offered and contribution requirements. There is no separate Board for the Trust as the Trust is administered by the Authority’s management.

In compliance with GASB 84, *Fiduciary Activities*, the Authority reports the financial position of the Plan in its Financial Statements and Notes. Accordingly, the Financial Statements are included after those of the Authority and details of the Plan assets (investments) are contained in Note 3, Deposits and Investments. Additional information is included in the Required Supplementary Information section.

Related-Party Transactions

The Authority has contracted with several other State entities to administer certain loan programs on their behalf for a fee. In order for the Authority to effectively administer the programs, the Authority has custody of the cash accounts for each program. The cash in these accounts, however, is not an asset of the Authority and, accordingly, the balances in these accounts have not been included in the Authority’s statements of net position. The cash balances total \$50,481,095 and \$49,322,248 at December 31, 2020 and 2019, respectively. The following is a summary of the programs that the Authority manages on behalf of other State entities:

| <u>Department/Board</u> | <u>Program</u> | <u>2020</u> | <u>2019</u> |
|---------------------------|---------------------------------------|---------------|---------------|
| Treasury | Local Development Financing Fund | \$ 43,811,958 | \$ 42,693,983 |
| Board of Public Utilities | BPU Clean Energy Program | 164,213 | 123,341 |
| Treasury | Business Employment Incentive Program | 6,504,924 | 6,504,924 |

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

Note 2: Summary of Significant Accounting Policies

(a) Basis of Accounting and Presentation

The Authority is a self-supporting entity and follows enterprise fund reporting; accordingly, the accompanying financial statements are presented using the economic resources measurement focus and the accrual basis of accounting. While detailed sub-fund information is not presented, separate accounts are maintained for each program and include certain funds that are legally designated as to use. Administrative expenses are allocated to the various programs.

In its accounting and financial reporting, the Authority follows the pronouncements of the Governmental Accounting Standards Board (“GASB”).

(b) Revenue Recognition

The Authority charges various program financing fees that may include an application fee, commitment fee, closing fee, issuance fee, annual servicing fee and a document execution fee. The Authority also charges a fee for the administration of financial programs for various government agencies and for certain real estate development and management activities. Fees are recognized when earned. Grant revenue is recognized when the Authority has complied with the terms and conditions of the grant agreements. The Authority recognizes interest income on lease revenue by amortizing the discount over the life of the related agreement. Operating lease revenue is recognized pursuant to the terms of the lease.

When available, it is the Authority’s policy to first use restricted resources for completion of specific projects.

(c) Cash Equivalents

Cash equivalents are highly liquid debt instruments with original maturities of three months or less and units of participation in the State of New Jersey Cash Management Fund (“NJCMF”).

(d) Investments

All investments, except for investment agreements, are stated at fair value. The fair value of investment securities is the market value based on quoted market prices, when available, or market prices provided by recognized broker dealers. The Authority also invests in various types of joint ventures and uses the cost method to record the acquisition of such investments, as the Authority

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

lacks the ability to exercise significant control in the ventures. Under the cost method, the Authority records the investment at its historical cost and recognizes as income dividends received from net earnings of the Fund. Dividends received in excess of earnings are considered a return of investment and reduce the cost basis. These investments typically have a long time horizon from when the Authority makes its initial investment to when it may receive any return on the investment. The Authority maintains a valuation allowance on specific investments when there is either a series of taxable losses or other factors may indicate that a decrease in value has occurred that is other than temporary. Capital investments are reported net of this valuation allowance.

(e) Guarantees Receivable

Payments made by the Authority under its various guarantee programs are reported as Guarantees Receivable. These receivables are expected to be recovered either from the lender, as the lender continues to service the loan, or from the liquidation of the underlying collateral. Recoveries increase Worth (the amount on deposit and available for payment) (see Note 7).

(f) Allowance for Doubtful Notes and Accrued Guarantee Losses

Allowances for doubtful notes and accrued guarantee losses are determined in accordance with guidelines established by the Office of Comptroller of Currency. These guidelines include classifications based on routine portfolio reviews of various factors that impact collectability.

(g) Pensions

For purposes of measuring the net pension liability, deferred outflows of resources and deferred inflows of resources related to pensions, and pension expense, information about the fiduciary net position of the New Jersey Public Employees' Retirement System (PERS) and additions to/deductions from PERS's fiduciary net position have been determined on the same basis as they are reported by the plan. For this purpose, benefit payments (including refunds of employee contributions) are recognized when due and payable in accordance with the benefit terms. Investments are reported at fair value.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

(h) Postemployment Benefits Other than Pensions (OPEB)

For purposes of measuring the net OPEB asset/(liability), deferred outflows of resources and deferred inflows of resources related to OPEB, and OPEB expense, information about the fiduciary net position of the Employee Benefit Trust (the “Trust”) and additions to/deductions from the Trust’s fiduciary net position have been determined on the same basis as they are reported by the Trust. For this purpose, the Trust recognizes benefit payments when due and payable in accordance with the benefit terms. Investments are reported at fair value.

(i) Operating and Non-Operating Revenues and Expenses

The Authority defines operating revenues and expenses as relating to activities resulting from providing bond financing, direct lending, incentives, and real estate development to commercial businesses, certain not-for-profit entities, and to local, county and State governmental entities. Non-operating revenues and expenses include income earned on the investment of funds, proceeds from the sale of certain assets, State and Federal appropriations and program payments.

(j) Net Position

The Authority classifies its Net Position into three categories: net investment in capital assets; restricted; and unrestricted. Net investment in capital assets includes capital assets net of accumulated depreciation used in the Authority’s operations as well as capital assets that result from the Authority’s real estate development and operating lease activities. Restricted net position includes net position that have been restricted in use in accordance with State law, as well as Federal grant proceeds intended for specific projects, such as the State Small Business Credit Initiative (“SSBCI”). Unrestricted net position includes all net position not included above.

(k) Taxes

The Authority is exempt from all Federal and State income taxes and real estate taxes.

(l) Capitalization Policy

Unless material, it is the Authority’s policy to expense all expenditures of an administrative nature. Administrative expenditures typically include expenses directly incurred to support staff operations, such as automobiles, information technology hardware and software, office furniture, and equipment.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

With the exception of immaterial tenant fit-out costs of retail space that is sublet from the State of New Jersey, the Authority capitalizes all expenditures related to the acquisition of land, construction and renovation of buildings.

(m) Depreciation Policy

Capital assets are stated at cost. Depreciation is computed using the straight-line method over the following estimated economic useful lives of the assets:

| | |
|---|-------------------|
| Building | 20 years |
| Building improvements | 20 years |
| Camden Amphitheater, per terms of agreement | 31 years |
| Leasehold improvements | Term of the lease |
| Tenant fit-out | Term of the lease |
| Vehicles | Expensed |
| Furniture and equipment | Expensed |

(n) New Accounting Standard Applied

GASB issued GASB Statement No. 84 (GASB No. 84), *Fiduciary Activities*, which is effective for reporting periods beginning after December 15, 2018. GASB No. 84 addresses criteria for identifying fiduciary activities of all state and local governments. The focus of the criteria is generally on (1) whether a government is controlling the assets of the fiduciary activity and (2) the beneficiaries with whom a fiduciary relationship exists. Separate criteria are included to identify fiduciary component units. Activities meeting these criteria should present a statement of fiduciary net position and a statement of changes in fiduciary net position. In 2020, the Authority applied the GASB No. 84 criteria as it relates to its OPEB plan.

(o) Recent and Upcoming Accounting Pronouncements

GASB Statement No. 87, *Leases*, was issued in June 2017. The primary objective of this Statement is to better meet the information needs of financial statement users by improving accounting and financial reporting for leases by governments. This Statement increases the usefulness of governments' financial statements by requiring recognition of certain lease assets and liabilities for leases that previously were classified as operating leases and recognized as inflows of resources or outflows of resources based on the payment provisions of the contract.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

It establishes a single model for lease accounting based on the foundational principle that leases are financings of the right to use an underlying asset. Under this Statement, a lessee is required to recognize a lease liability and an intangible right-to-use lease asset, and a lessor is required to recognize a lease receivable and a deferred inflow of resources, thereby enhancing the relevance and consistency of information about governments' leasing activities.

The Statement, as amended by GASB 95, is effective for fiscal years beginning after June 15, 2021. The Authority is in the process of evaluating the impact of its adoption on the financial statements.

GASB Statement No. 88, *Certain Disclosures Related to Debt, including Direct Borrowings and Direct Placements*, was issued in April 2018. The primary objective of this Statement is to improve the information that is disclosed in notes to government financial statements related to debt, including direct borrowings and direct placements. It also clarifies which liabilities governments should include when disclosing information related to debt.

The Statement, as amended by GASB 95, is effective for fiscal years beginning after June 15, 2020. The Authority is in the process of evaluating the impact of its adoption on the financial statements.

GASB Statement No. 89, *Accounting for Interest Cost Incurred before the End of a Construction Period*, was issued in June 2018. The primary objectives of this Statement are (1) to enhance the relevance and comparability of information about capital assets and the cost of borrowing for a reporting period and (2) to simplify accounting for interest cost incurred before the end of a construction period.

This Statement establishes accounting requirements for interest cost incurred before the end of a construction period. Such interest cost includes all interest that previously was accounted for in accordance with the requirements of paragraph 5-22 of Statement No. 62, *Codification of Accounting and Financial Reporting Guidance Contained in Pre-November 30, 1980 FASB and AICPA Pronouncements*, which are superseded by this Statement. This Statement requires that interest cost incurred before the end of a construction period be recognized as an expense in the period in which the cost is incurred for financial statements prepared using the economic resources measurement focus. As a result, interest cost incurred before the end of a construction period will not be included in the historical cost of a capital asset reported in a business-type activity or enterprise fund.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

The Statement, as amended by GASB 95, is effective for fiscal years beginning after December 15, 2020. The Authority is in the process of evaluating the impact of its adoption on the financial statements.

GASB Statement No. 91, *Conduit Debt Obligations*, was issued in May 2019. The primary objectives of this Statement are to provide a single method of reporting conduit debt obligations by issuers and eliminate diversity in practice associated with (1) commitments extended by issuers, (2) arrangements associated with conduit debt obligations, and (3) related note disclosures. This Statement achieves those objectives by clarifying the existing definition of a conduit debt obligation; establishing that a conduit debt obligation is not a liability of the issuer; establishing standards for accounting and financial reporting of additional commitments and voluntary commitments extended by issuers and arrangements associated with conduit debt obligations; and improving required note disclosures.

The Statement, as amended by GASB 95, is effective for reporting periods beginning after December 15, 2021. The Authority is in the process of evaluating the impact of its adoption on the financial statements.

GASB Statement No. 92, *Omnibus 2020*, was issued in January 2020. The objectives of this Statement are to enhance comparability in accounting and financial reporting and to improve the consistency of authoritative literature by addressing practice issues that have been identified during implementation and application of certain GASB Statements. This Statement addresses a variety of topics and includes specific provisions about the following:

- The effective date of Statement No. 87, *Leases*, and Implementation Guide No. 2019-3, *Leases*, for interim financial reports
- Reporting of intra-entity transfers of assets between a primary government employer and a component unit defined benefit pension plan or defined benefit other postemployment benefit (OPEB) plan
- The applicability of Statements No. 73, *Accounting and Financial Reporting for Pensions and Related Assets That Are Not within the Scope of GASB Statement 68*, and *Amendments to Certain Provisions of GASB Statements 67 and 68*, as amended, and No. 74, *Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans*, as amended, to reporting assets accumulated for postemployment benefits
- The applicability of certain requirements of Statement No. 84, *Fiduciary Activities*, to postemployment benefit arrangements
- Measurement of liabilities (and assets, if any) related to asset retirement obligations (AROs) in a government acquisition

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

- Reporting by public entity risk pools for amounts that are recoverable from reinsurers or excess insurers
- Reference to nonrecurring fair value measurements of assets or liabilities in authoritative literature
- Terminology used to refer to derivative instruments.

The requirements related to the effective date of Statement 87 and Implementation Guide 2019-3, reinsurance recoveries, and terminology used to refer to derivative instruments are effective upon issuance. The requirements related to all other items, as amended by GASB 95, are effective for fiscal years beginning after June 15, 2021. The Authority is in the process of evaluating the impact of its adoption on the financial statements.

GASB Statement No. 93, *Replacement of Interbank Offered Rates*, was issued in March 2020. Some governments have entered into agreements in which variable payments made or received depend on an interbank offered rate (IBOR)—most notably, the London Interbank Offered Rate (LIBOR). As a result of global reference rate reform, LIBOR is expected to cease to exist in its current form at the end of 2021, prompting governments to amend or replace financial instruments for the purpose of replacing LIBOR with other reference rates, by either changing the reference rate or adding or changing fallback provisions related to the reference rate. The objective of this Statement is to address those and other accounting and financial reporting implications that result from the replacement of an IBOR. The removal of LIBOR as an appropriate benchmark interest rate is effective for reporting periods ending after December 31, 2021. All other requirements of this Statement, as amended by GASB 95, are effective for reporting periods beginning after June 15, 2021.

GASB Statement No. 94, *Public-Private and Public-Public Partnerships and Availability Payment Arrangements*, was issued in March 2020. The primary objective of this Statement is to improve financial reporting by addressing issues related to public-private and public-public partnership arrangements (PPPs). As used in this Statement, a PPP is an arrangement in which a government (the transferor) contracts with an operator (a governmental or nongovernmental entity) to provide public services by conveying control of the right to operate or use a nonfinancial asset, such as infrastructure or other capital asset (the underlying PPP asset), for a period of time in an exchange or exchange-like transaction. Some PPPs meet the definition of a service concession arrangement (SCA), which the Board defines in this Statement as a PPP in which (1) the operator collects and is compensated by fees from third parties; (2) the transferor determines or has the ability to modify or approve which services the operator is required to provide, to whom the operator is required to provide the services, and the prices or rates that can be charged for the services; and (3) the transferor is entitled to significant residual interest in the service utility of the underlying PPP asset at the end of the arrangement. This Statement also provides guidance for accounting and financial reporting for availability payment

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

arrangements (APAs). As defined in this statement, an APA is an arrangement in which a government compensates an operator for services that may include designing, constructing, financing, maintaining, or operating an underlying nonfinancial asset for a period of time in an exchange or exchange-like transaction. The requirements of this Statement are effective for fiscal years beginning after June 15, 2022, and all reporting periods thereafter.

GASB Statement No. 95, *Postponement of the Effective Dates of Certain Authoritative Guidance*, was issued in May 2020. The primary objective of this statement is to provide temporary relief to governments and other stakeholders in light of the COVID-19 pandemic. That objective is accomplished by postponing the effective dates of certain provisions in GASB Statements and Implementation Guides that first became effective or are scheduled to become effective for periods beginning after June 15, 2018, and later. The effective dates of certain provisions contained in the previous pronouncements are postponed by one year. The effective date for GASB 87 is postponed by 18 months.

GASB Statement No. 96, *Subscription-Based Information Technology Arrangements*, was issued in May 2020. This Statement provides guidance on the accounting and financial reporting for subscription-based information technology arrangements (SBITAs) for government end users (governments). This Statement (1) defines a SBITA; (2) establishes that a SBITA results in a right-to-use subscription asset—an intangible asset—and a corresponding subscription liability; (3) provides the capitalization criteria for outlays other than subscription payments, including implementation costs of a SBITA; and (4) requires note disclosures regarding a SBITA. To the extent relevant, the standards for SBITAs are based on the standards established in Statement No. 87, *Leases*, as amended. The requirements of this Statement are effective for fiscal years beginning after June 15, 2022, and all reporting periods thereafter.

GASB Statement No. 97, *Component Unit Criteria, and Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans—an amendment of GASB Statements No. 14 and No. 84, and a supersession of GASB Statement No. 32*, was issued in June 2020. This Statement requires that for purposes of determining whether a primary government is financially accountable for a potential component unit, except for a potential component unit that is a defined contribution pension plan, a defined contribution OPEB plan, or an other employee benefit plan (for example, certain Section 457 plans), the absence of a governing board should be treated the same as the appointment of a voting majority of a governing board if the primary government performs the duties that a governing board typically would perform.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

This Statement also requires that the financial burden criterion in paragraph 7 of Statement No. 84, *Fiduciary Activities*, be applicable to only defined benefit pension plans and defined benefit OPEB plans that are administered through trusts that meet the criteria in paragraph 3 of Statement No. 67, *Financial Reporting for Pension Plans*, or paragraph 3 of Statement No. 74, *Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans*, respectively.

This Statement (1) requires that a Section 457 plan be classified as either a pension plan or an other employee benefit plan depending on whether the plan meets the definition of a pension plan and (2) clarifies that Statement 84, as amended, should be applied to all arrangements organized under IRC Section 457 to determine whether those arrangements should be reported as fiduciary activities.

This Statement supersedes the remaining provisions of Statement No. 32, *Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans*, as amended, regarding investment valuation requirements for Section 457 plans. As a result, investments of *all* Section 457 plans should be measured as of the end of the plan's reporting period in all circumstances.

The requirements of this Statement that (1) exempt primary governments that perform the duties that a governing board typically performs from treating the absence of a governing board the same as the appointment of a voting majority of a governing board in determining whether they are financially accountable for defined contribution pension plans, defined contribution OPEB plans, or other employee benefit plans and (2) limit the applicability of the financial burden criterion in paragraph 7 of Statement 84 to defined benefit pension plans and defined benefit OPEB plans that are administered through trusts that meet the criteria in paragraph 3 of Statement 67 or paragraph 3 of Statement 74, respectively, are effective immediately.

The requirements of this Statement that are related to the accounting and financial reporting for Section 457 plans are effective for fiscal years beginning after June 15, 2021. For purposes of determining whether a primary government is financially accountable for a potential component unit, the requirements of this Statement that provide that for all other arrangements, the absence of a governing board be treated the same as the appointment of a voting majority of a governing board if the primary government performs the duties that a governing board typically would perform, are effective for reporting periods beginning after June 15, 2021. Earlier application of those requirements is encouraged and permitted by requirement as specified within this Statement.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

(p) Reclassifications

Certain reclassifications have been made to prior year balances to conform to current year presentation.

Note 3: Deposits and Investments

(a) Deposits

Operating cash is held in the form of Negotiable Order of Withdrawal (“NOW”) accounts and money market accounts. At December 31, 2020, the Authority’s bank balance was \$72,481,526. Of the bank balance, \$750,000 was insured with Federal Deposit Insurance.

Pursuant to GASB Statement No. 40, *Deposit and Investment Risk Disclosures* (“GASB 40”), the Authority’s NOW accounts, as well as money market accounts and certificates of deposit, are profiled in order to determine exposure, if any, to Custodial Credit Risk (risk that in the event of failure of the counterparty the Authority would not be able to recover the value of its deposit or investment). Deposits are considered to be exposed to Custodial Credit Risk if they are: uninsured, uncollateralized (securities are not pledged to the depositor), collateralized with securities held by the pledging financial institution, or collateralized with securities held by the pledging financial institution’s trust department or agent but not in the government’s (NJEDA) name. At December 31, 2020 and 2019, all of the Authority’s deposits were collateralized by securities held in its name and, accordingly, not exposed to custodial credit risk.

Cash deposits at December 31, 2020 and 2019 were as follows:

| Deposit Type | 2020 | 2019 |
|-----------------------|----------------------|----------------------|
| NOW Accounts | \$ 59,273,691 | \$ 12,749,498 |
| Money Market Accounts | 9,388,234 | 9,369,595 |
| Total deposits | <u>\$ 68,661,925</u> | <u>\$ 22,119,093</u> |

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

(b) Investments

Pursuant to the Act, the funds of the Authority may be invested in any direct obligations of, or obligations as to which the principal and interest thereof is guaranteed by, the United States of America or other obligations as the Authority may approve. Accordingly, the Authority directly purchases permitted securities and enters into interest-earning investment contracts.

As of December 31, 2020 and 2019, the Authority's total investments, excluding capital investments, amounted to \$185,848,775 and \$237,909,417, respectively. The Authority's investment portfolio ("Portfolio") is comprised of short to medium term bonds and is managed by a financial institution for the Authority. These investments include obligations guaranteed by the U.S. Government, Government Sponsored Enterprises, Money Market Funds, Corporate Debt rated at least A- by Standard & Poor's ("S&P") or equivalent by Moody's and Repurchase Agreements. The Portfolio is managed with the investment objectives of: preserving capital, maintaining liquidity, achieving superior yields, and providing consistent returns over time. In order to limit interest rate risk, investments are laddered, with maturities ranging from several months to a maximum of five years.

Investment of bond proceeds is made in accordance with the Authority's various bond resolutions. The bond resolutions generally permit the investment of funds held by the trustee in the following: (a) obligations of, or guaranteed by, the State or the U.S. Government; (b) repurchase agreements secured by obligations noted in (a) above; (c) interest-bearing deposits, in any bank or trust company, insured or secured by a pledge of obligations noted in (a) above; (d) State of New Jersey Cash Management Fund (NJCMF); (e) shares of an open-end diversified investment company which invests in obligations with maturities of less than one year of, or guaranteed by, the U.S. Government or Government Agencies; and (f) non-participating guaranteed investment contracts.

In order to maximize liquidity, the Authority utilizes the NJCMF as an investment. All investments in the NJCMF are governed by the regulations of the State of New Jersey, Department of Treasury, Division of Investment, which prescribes specific standards designed to ensure the quality of investments and to minimize the risks related to investments. The NJCMF invests pooled monies from various State and non-State agencies in primarily short-term investments. These investments include: U.S. Treasuries; short-term commercial paper; U.S. Agency Bonds; Corporate Bonds; and Certificates of Deposit. Agencies that participate in the NJCMF typically earn returns that mirror short-term investment rates. Monies can be freely added or withdrawn from the NJCMF on a daily basis without penalty. At December 31, 2020 and 2019, the Authority's balance in the NJCMF is \$78,494,699 and \$51,919,644, respectively. The fair value is measured based on net asset value ("NAV") which approximates \$1 per share.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

Custodial Credit Risk

Pursuant to GASB 40, the Authority's investments are profiled to determine if they are exposed to custodial credit risk. Investment securities are exposed to custodial credit risk if the securities are uninsured, are not registered in the name of the government (NJEDA), and are held by either: the counterparty (institution that pledges collateral to government or that buys/sells investments for government) or the counterparty's trust department or agent but not in the name of the government. Investment pools such as the NJCMF and open-ended mutual funds including Mutual Bond Funds are deemed not to have custodial credit risk. As of December 31, 2020, and December 31, 2019, no investments are subject to custodial credit risk as securities in the Portfolio are held in the name of the Authority.

Concentration of Credit Risk

The Authority does not have an investment policy regarding concentration of credit risk, however, the Authority's practice is to limit investments in certain issuers. No more than 5% of the Authority funds may be invested in individual corporate and municipal issuers; and no more than 10% in individual U.S. Government Agencies. At December 31, 2020, \$18,118,341 or 9.75% was held in the Freddie Mac U.S. Government Agency. At December 31, 2019 none of the Authority's individual investments comprised more than 5% of the Authority's total investments. Investments issued by or guaranteed by the U.S. Government, mutual fund investments, and pooled investments are exempt from this requirement.

Credit Risk

The Authority does not have an investment policy regarding the management of credit risk, as outlined above. GASB 40 requires that disclosure be made as to the credit rating of all debt security investments except for obligations of the U.S. government or investments guaranteed by the U.S. Government. All investments in U.S. Agencies are rated Aaa by Moody's and AA+ by S&P. The mutual bond fund was rated AAA by S&P. Corporate bonds were rated BBB+/A-/A/A+/AA-/AA/AA+, by S&P. Municipal bonds were rated AA,AA+,AAA,NR by S&P and Aa1, Aa2, Aa3,NR by Moody's. The certificates of deposit were rated A,A+,AA- by S&P. The NJCMF is not rated.

Interest Rate Risk

The Authority does not have a policy to limit interest rate risk, however, its practice is to hold investments to maturity.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

Fair Value Measurements

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the financial statement measurement date. The fair value hierarchy categorizes the inputs to valuation techniques used to measure fair value into three levels as follows:

- Level 1 – unadjusted quoted prices in active markets for identical assets;
- Level 2 – quoted prices other than those included within Level 1 and other inputs that are observable for the asset or liability, either directly or indirectly;
- Level 3 – unobservable inputs for an asset or liability.

As of December 31, 2020 and 2019, the Authority had the following investments and maturities:

| | | December 31, 2020 | | | |
|--|-------|-------------------|---------------------------------|-------------------------|---------------------------------------|
| Investment Type | Level | Fair Value | Investments Less than 1 Year | Maturities 1–5 Years | Fair Value as of December 31, 2019 |
| Investments by fair value level | | | | | |
| Debt Securities: | | | | | |
| U.S. Treasuries | 1 | \$ 57,508,329 | \$ 28,069,250 | \$ 29,439,079 | \$ 126,576,050 |
| U.S. Agencies | 2 | 26,463,420 | - | 26,463,420 | 22,735,231 |
| Corporate Bonds | 2 | 74,403,610 | 2,234,756 | 72,168,854 | 72,369,109 |
| Municipal Bonds | 2 | 17,124,308 | - | 17,124,308 | 8,381,866 |
| Certificate of deposit | 2 | 10,349,108 | - | 10,349,108 | 7,847,161 |
| Mutual Bond Funds | 1 | 13,540,112 | 13,540,112 | - | 1,248,509 |
| Total investments by fair value level | | 199,388,887 | \$ 43,844,118 | \$ 155,544,769 | 239,157,926 |
| Investment Pool at NAV | | | | | |
| State of NJ Cash Management Fund | | 78,494,699 | | | 51,919,644 |
| Total investments measured at fair value | | 277,883,586 | | | 291,077,570 |
| Less amounts reported as cash equivalents | | (92,034,811) | | | (53,168,153) |
| Total investments | | \$ 185,848,775 | | | \$ 237,909,417 |

Debt securities classified in Level 2 of the fair value hierarchy are valued using a matrix pricing technique.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

(c) Special Purpose Investments

Pursuant to the Authority's mission, from time to time, in order to expand employment opportunities in the State and to spur economic development opportunities, the Authority, with the authorization of the Board, will make special purpose investments. These special purpose investments include the Authority's participation as a limited partner in various venture funds formed with the primary purpose of providing venture capital to exceptionally talented entrepreneurs dedicated to the application of proprietary technologies or unique services in emerging markets and whose companies are in the expansion stage. At December 31, 2020 and 2019, the aggregate value of the Authority's investment in these funds is \$10,306,149 and \$9,520,862, respectively. As a limited partner, the Authority receives financial reports from the managing partner of the funds, copies of which may be obtained by contacting the Authority.

For the purpose of financial reporting, the ownership in stock or equity interest in connection with economic development activities, such as providing venture capital, does not meet the definition of an investment because the asset is held primarily to further the economic development objectives of the Authority. Accordingly, the Authority uses the cost method as the measurement basis.

At December 31, 2020 and 2019, the Authority also held other equity investments of \$2,146 and \$2,658, respectively. The investments were held in the form of stock.

(d) Fiduciary Activities – OPEB Trust

OPEB Trust Deposits and Investments

The Trust's investments are made in accordance with the provisions of the Authority's Investment Policy (the "Investment Policy"). The goals of the Investment Policy are to invest for the sole purpose of funding the OPEB Plan obligation of the Authority in a prudent manner, and to conserve and enhance the value of the Trust assets through appreciation and income generation while maintaining a moderate investment risk.

The Trust has retained an investment consultant to ensure that strategic investment diversification is attained, to employ investment managers with expertise in their respective asset classes, and to closely monitor the implementation and performance of the respective investment strategies.

The Trust is currently invested in the following securities within the current investment policy limitations:

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

| Asset Class | 2020 Exposure | 2019 Exposure |
|---------------------------|----------------------|----------------------|
| Equities | 15.6% | 13.9% |
| Fixed Income: | | |
| U.S. Treasury | 22.4 | 27.8 |
| U.S. Agency | 9.7 | 5.8 |
| Corporate bonds | 31.5 | 31.3 |
| Commercial paper | - | - |
| Municipal | 2.4 | 3.8 |
| Certificate of deposit | 0.4 | 1.2 |
| Cash and cash equivalents | 18.0 | 16.2 |

The current investment policy restricts the investments to a target allocation of 30% of investments in U.S. equities with 70% in fixed income as follows: U.S. Treasury obligations, federal instrumentality securities, corporate debt, taxable municipal bonds, commercial paper, repurchase agreements and money market mutual funds.

The Trust does not have an investment policy regarding concentration of credit risk, however, the Trust's practice is to limit investments in certain issuers. The current investment philosophy represents a long-term perspective. When asset weightings fall outside the Investment Policy range, the investment advisor shall advise the Trust on potential investment courses of action and the Trust may elect to rebalance the Trust asset mix.

Fair value is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the financial statement measurement date. The fair value hierarchy categorizes the inputs to valuation techniques used to measure fair value into three levels as follows:

Level 1 – value based on quoted prices in active markets for identical assets.

Level 2 – value based on significant other observable inputs such as a matrix pricing technique. Matrix pricing is used to value securities based on the securities' relationship to benchmark quoted prices.

Level 3 – value based on inputs that are unobservable and significant to the fair value measurement such as discounted cash flows.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

The following summarizes the Trust's investments by type held at December 31, 2020 and 2019 (in thousands):

| Investment Type | Level | December 31, 2020 | | | | Fair Value as of December 31, 2019 |
|--|-------|-------------------|---------------------------------|-------------------------|--------------------------|--|
| | | Fair Value | Investments Less than 1 Year | Maturities 1–5 Years | Maturities 6–10 Years | |
| Investments by fair value level | | | | | | |
| U.S. Treasuries | 1 | \$ 9,885 | \$ 1,277 | \$ 5,909 | \$ 2,699 | \$ 11,418 |
| U.S. Agencies | 2 | 4,274 | - | 3,229 | 1,045 | 2,384 |
| Corporate Bonds | 2 | 13,929 | 646 | 5,696 | 7,587 | 12,839 |
| Municipal Bonds | 2 | 1,055 | 202 | 853 | - | 1,561 |
| Dreyfus Cash Management Fund | 1 | 7,955 | 7,955 | - | - | 6,643 |
| Certificate of deposit | 2 | 201 | - | 201 | - | 507 |
| Mutual funds | 1 | 6,877 | 6,877 | - | - | 5,725 |
| Total investments by fair value level | | 44,176 | 16,957 | 15,888 | 11,331 | 41,077 |
| Less amounts reported as cash equivalents per the financial statements | | 7,955 | | | | 6,643 |
| Total investments per the financial statements | | \$ 36,221 | | | | \$ 34,434 |

Debt securities classified in Level 2 of the fair value hierarchy are valued using a matrix pricing technique.

The following discusses the Trust's exposure to common deposit and investment risks related to custodial credit, credit, concentration of credit, interest rate and foreign currency risks as of December 31, 2020.

Custodial Credit Risk

Custodial credit risk is the risk that, in the event of a failure of a depository financial institution, the Trust's deposits may not be returned. Investment securities are exposed to custodial credit risk if the securities are uninsured, are not registered in the name of the Trust and are held by either the depository financial institution or the depository financial institution's trust department or agent but not in the Trust's name.

The Trust manages custodial credit risk by limiting its investments to highly rated institutions and or requiring high quality collateral be held by the trustee in the name of the Trust.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

Credit Risk

Credit risk exists when there is a possibility the issuer or other counterparty to an investment may be unable to fulfill its obligations. The Trust has an investment policy regarding the management of Credit Risk, as outlined above. GASB Statement No. 40, *Deposit and Investment Risk Disclosures*, requires that disclosure be made as to the credit rating of all debt security investments except for obligations of the U.S. government or investments guaranteed by the U.S. government. All investments in U.S. Agencies (\$4,273,739) and U.S. Treasuries (\$9,884,820) are rated AA+ by Standard & Poor's ("S&P"). Corporate bonds were rated AAA/AA+/AA/AA-/A+/A-/BBB+/BBB/BBB- (\$13,929,406) by S&P. Municipal bonds were rated Aa1-3/NR (\$1,054,998) by Moody's. The Certificate of deposit was rated A by S&P (\$200,525). The Dreyfus Cash Management Fund (\$7,955,069) was rated AAA by S&P.

At December 31, 2020, the Trust's fixed income investments totaled \$37,298,166.

Corporate debt, when purchased, must be rated no less than BBB or the equivalent by at least two Nationally Recognized Statistical Rating Organizations ("NRSRO"). Taxable municipal bonds should be rated at least A- or the equivalent at the time of purchase by at least two NRSROs. Commercial paper and repurchase agreements should have the ratings of at least A-1 by two or more NRSROs. Money market mutual funds and local government investment pools must have a rating of AAA by one or more NRSROs.

Concentration of Credit Risk

Concentration of credit risk is the risk of loss that may be attributed to the magnitude of the Trust's investment in a single issuer. Investments of Trust assets are diversified in accordance with the Authority's investment policy that defines guidelines for the investment holdings. The asset allocation in the investment portfolio should be flexible depending upon the outlook for the economy and the securities markets. At December 31, 2020 none of the Trust's individual investments comprised more than 5% of total investments. U.S. Government issued securities (U.S. Treasury securities) are exempt from this requirement.

Interest Rate Risk

Interest rate risk is the risk that changes in interest rates will adversely affect the fair value of an investment. Within the fixed income and cash portions of the portfolio it is managed using the effective duration methodology.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

This methodology is widely used in the management of fixed income portfolios in that it quantifies with greater precision the amount of risk due to interest rate changes. The weighted duration of the fixed income portfolio at December 31, 2020 is 4.0 years. In the equities section of the portfolio interest rate risk is managed by limiting equity exposure to 30% of the portfolio and investing in mutual funds that limit risk by diversifying holdings and purchasing companies of lower risk.

Rate of Return

As required by GASB Statement 74, the annual money weighted rate of return on trust investments, net of investment expenses was 7.26% and 8.44% for the years ended December 31, 2020 and 2019, respectively. The calculation is based on monthly income and average monthly investment balances.

Note 4: Notes Receivable

Notes receivable consist of the following:

| | December 31 | |
|--|----------------|----------------|
| | 2020 | 2019 |
| Economic Development Fund ("EDF") loan program; interest ranging up to 7.5%; maximum term of 10 years | \$ 47,375,453 | \$ 49,213,103 |
| Economic Recovery Fund ("ERF") loan and guarantee programs; interest ranging up to 9.8%; maximum term of 19 years | 102,844,087 | 97,487,652 |
| Hazardous Discharge Site Remediation ("HDSR") loan program; interest ranging up to 5.0%; maximum term of 5 years | 1,867,639 | 1,871,172 |
| Municipal Economic Recovery Initiative ("MERI") loan program; interest ranging up to 3.0%; maximum term of 8 years | 205,219 | 227,447 |
| Stronger NJ Business (SNJ) loan program; interest ranging up to 2.62%; maximum term of 30 years | 80,952,151 | 74,224,908 |
| | \$ 233,244,549 | \$ 223,024,282 |

Aggregate Notes Receivable activity for the year ended December 31, 2020 was as follows:

| | Beginning Balance | Loan Disbursements | Loan Receipts | Write-offs, Adjustments, Restructures – Net | Ending Balance | Amounts Due Within One Year |
|---------|----------------------|-----------------------|------------------|---|-------------------|-----------------------------------|
| EDF/ERF | \$ 146,700,755 | \$ 23,238,642 | \$ (19,339,222) | \$ (380,635) | \$ 150,219,540 | \$ 23,568,867 |
| HDSR | 1,871,172 | 110,077 | (113,611) | - | 1,867,639 | 1,082,198 |
| MERI | 227,447 | - | (22,228) | - | 205,219 | 28,845 |
| SNJ | 74,224,908 | 14,377,035 | (2,420,234) | (5,229,559) | 80,952,151 | 3,890,735 |
| | \$ 223,024,282 | \$ 37,725,754 | \$ (21,895,295) | \$ (5,612,194) | \$ 233,244,549 | \$ 28,570,645 |

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

Note 5: Leases

(a) Leases Receivable

The Authority had a financing lease relating to the issuance of Bonds and Notes Payable. Bond and Note proceeds finance specific projects. The financing lease provides for basic rental payments, by the tenant to the Authority, in an amount at least equal to the amount of debt service on the Bonds and Notes. In the event of default by the tenant to make rental payments, the Authority generally has recourse, including, but not limited to, taking possession and selling or subletting the leased premises and property. The lease receivable from Daily News was received in 2020 as the amount due was paid in full.

The outstanding lease as of December 31, 2020 and 2019 is as follows:

| Lease Description | 2020 | 2019 |
|---|-------------|---------------------|
| NY Daily News, through January 23, 2021 | \$ - | \$ 6,948,102 |
| Unamortized discount | - | (119,014) |
| Aggregate lease payments receivable – net | <u>\$ -</u> | <u>\$ 6,829,088</u> |

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

Lease payments receivable activity for the year ended December 31, 2020 was as follows:

| | Beginning Balance | Reductions | Ending Balance | Amount Receivable Within One Year |
|------------------|------------------------------|-----------------------|---------------------------|--|
| Gross receivable | \$ 6,948,102 | \$ (6,948,102) | \$ - | \$ - |
| Discount | (119,014) | 119,014 | - | - |
| Net receivable | <u>\$ 6,829,088</u> | <u>\$ (6,829,088)</u> | <u>\$ -</u> | <u>\$ -</u> |

(b) Operating Leases

(i) Authority as Lessor

At December 31, 2020, capital assets with a carrying value of \$134,928,968 and accumulated depreciation of \$88,514,906 are leased to commercial enterprises. These leases generally provide the tenant with renewal and purchase options. Aggregate minimum lease receipts are expected as follows:

| | |
|-----------|----------------------|
| 2021 | \$ 6,569,926 |
| 2022 | 5,260,783 |
| 2023 | 4,445,591 |
| 2024 | 4,330,655 |
| 2025 | 2,339,494 |
| 2026–2030 | 1,031,040 |
| 2031–2035 | 420,200 |
| 2036–2040 | 420,200 |
| 2041–2044 | 336,160 |
| | <u>\$ 25,154,049</u> |

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

(ii) Authority as Lessee

The Authority leases commercial property, buildings, and office space for use by Authority staff. Aggregate rental expense for the current year amounted to \$410,106. Aggregate future lease obligations are as follows:

| | |
|------|--------------------|
| 2021 | \$ 481,519 |
| 2022 | 470,177 |
| 2023 | 482,387 |
| 2024 | 494,915 |
| | <u>\$1,928,998</u> |

Note 6: Capital Assets

Capital asset activity for the years ended December 31, 2020 and 2019 was as follows:

| | December 31, 2019 | Additions | Reductions | December 31, 2020 |
|---------------------------------------|----------------------|----------------|------------|----------------------|
| Capital assets not being depreciated: | | | | |
| Land | \$ 28,818,065 | \$ - | \$ - | \$ 28,818,065 |
| Construction in progress | - | 800,253 | - | 800,253 |
| Capital assets being depreciated: | | | | |
| Buildings | 81,722,446 | - | - | 81,722,446 |
| Leasehold improvements | 36,306,634 | 300,674 | - | 36,607,308 |
| Capital assets – gross | 146,847,145 | 1,100,927 | - | 147,948,072 |
| Less: accumulated depreciation | 93,523,252 | 4,103,578 | - | 97,626,830 |
| Capital assets – net | \$ 53,323,893 | \$ (3,002,651) | \$ - | \$ 50,321,242 |

| | December 31, 2018 | Additions | Reductions | December 31, 2019 |
|---------------------------------------|----------------------|----------------|------------|----------------------|
| Capital assets not being depreciated: | | | | |
| Land | \$ 28,818,065 | \$ - | \$ - | \$ 28,818,065 |
| Capital assets being depreciated: | | | | |
| Buildings | 81,722,446 | - | - | 81,722,446 |
| Leasehold improvements | 35,210,658 | 1,095,976 | - | 36,306,634 |
| Capital assets – gross | 145,751,169 | 1,095,976 | - | 146,847,145 |
| Less: accumulated depreciation | 89,096,313 | 4,426,939 | - | 93,523,252 |
| Capital assets – net | \$ 56,654,856 | \$ (3,330,963) | \$ - | \$ 53,323,893 |

In 2020, the Authority initiated pre-construction (project design) work related to the New Jersey Wind Port project in Lower Alloways Creek Township, Salem County. Additional fit-out costs were also incurred for rental office space for Authority staff in the City of Newark, Essex County.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

In 2019, the Authority incurred fit-out costs, in the form of leasehold improvements for rental office space for Authority staff in the City of Newark, Essex County.

Note 7: Commitments and Contingencies

(a) Loan and Bond Guarantee Programs

The Authority has a special binding obligation regarding all guarantees to the extent that funds are available in the guarantee accounts as specified in the guarantee agreements. Guarantees are not, in any way, a debt or liability of the State.

(1) Economic Recovery Fund

The guarantee agreements restrict the Authority from approving any loan or bond guarantee if, at the time of approval, the Debt (exposure and commitments) to Worth (the amount on deposit and available for payment) ratio is greater than 5 to 1. At any time, payment of the guarantee is limited to the amount of Worth within the guarantee program account. Principal payments on guaranteed loans and bonds reduce the Authority's exposure. At December 31, 2020, Debt was \$13,600,695 and Worth was \$176,226,606, with a ratio of 0.08 to 1.

(2) New Jersey Business Growth Fund

The Authority guarantees between 25% and 50% of specific, low-interest loans to New Jersey companies, made by one of its preferred lenders, with a maximum aggregate exposure to the Authority not to exceed \$10 million and, at no time will the Authority pay more than \$10 million, net, of guarantee demands. At December 31, 2020, aggregate exposure and related Worth within the Business Growth Fund account are both \$169,344.

(3) State Small Business Credit Initiative Fund

The Federal grant agreement restricts the Authority from approving any loan or bond guarantee if, at the time of approval, the Debt to Worth ratio is greater than 1 to 1. At any time, payment of the guarantee is limited to the amount of Worth within the State Small Business Credit Initiative Fund. At December 31, 2020, the Fund had no Debt, and Worth was \$3,098,677.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

(b) Loan Program Commitments and Project Financings

At December 31, 2020, the Authority has \$12,065,035 of loan commitments not yet closed or disbursed and \$58,934,514 of project financing commitments.

Note 8: State and Federal Appropriations and Program Payments

The Authority receives appropriations from the State of New Jersey, as part of the State's annual budget, for purposes of administering certain grant programs enacted by State statute, and has also received appropriations from the United States Department of Housing and Urban Development, as well as the Federal Emergency Management Agency, via the State of New Jersey, for purposes of administering certain loan and grant programs for businesses in connection with the aftermath of Superstorm Sandy in October 2012. In 2020, the Authority received appropriations from the United States Department of Treasury, as part of the CARES Act of 2020, via the State of New Jersey, for purposes of administering certain emergency grant programs for businesses adversely impacted by the COVID-19 pandemic. The Authority recognizes the disbursement of these funds to grantees as program payments. For the year ended December 31, 2020 state and federal appropriations and program payments were \$44,145,976, \$262,821,945, and \$246,715,423, respectively.

Note 9: Litigation

The Authority is involved in several lawsuits that, in the opinion of the management of the Authority, will not have a material effect on the accompanying financial statements.

Note 10: Employee Retirement Systems

(a) Public Employees' Retirement System of New Jersey ("PERS")

The Authority's employees participate in the PERS, a cost sharing multiple-employer defined benefit plan administered by the State. The Authority's contribution is based upon an actuarial computation performed by the PERS. Employees of the Authority are required to participate in the PERS and contributed 7.50% in 2020 and 2019 of their pensionable compensation. The PERS also provides death and disability benefits. All benefits and contribution requirements are established, or amended, by State statute.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

Benefits Provided

The vesting and benefit provisions are set by N.J.S.A. 43:15A. PERS provides retirement, death and disability benefits. All benefits vest after ten years of service, except for medical benefits, which vest after a minimum of 25 years of service or under the disability provisions of PERS.

The following represents the membership tiers for PERS:

| Tier | Definition |
|-------------|--|
| 1 | Members who were enrolled prior to July 1, 2007 |
| 2 | Members who were eligible to enroll on or after July 1, 2007 and prior to November 2, 2008 |
| 3 | Members who were eligible to enroll on or after November 2, 2008 and prior to May 22, 2010 |
| 4 | Members who were eligible to enroll on or after May 22, 2010 and prior to June 28, 2011 |
| 5 | Members who were eligible to enroll on or after June 28, 2011 |

Service retirement benefits of 1/55th of final average salary for each year of service credit is available to tiers 1 and 2 members upon reaching age 60, and to tier 3 members upon reaching age 62. Service retirement benefits of 1/60th of final average salary for each year of service credit is available to tier 4 members upon reaching age 62, and tier 5 members upon reaching age 65. Early retirement benefits are available to tiers 1 and 2 members before reaching age 60, tiers 3 and 4 before age 62, and tier 5 with 30 or more years of service credit before age 65. Benefits are reduced by a fraction of a percent for each month that a member retires prior to the retirement age of his/her respective tier. Deferred retirement is available to members who have at least 10 years of service credit and have not reached the service retirement age for the respective tier.

Contributions Made

The contribution policy is set by N.J.S.A. 43:15 and requires contributions by active members and contributing employers. State legislation has modified the amount that is contributed by the State. The State's pension contributions are based on an amortization of the unfunded accrued liability. Funding for noncontributory group insurance benefits is based on actual claims paid. For fiscal year 2020, the State's pension contribution was less than the actuarial determined amount.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

The annual employer contributions include funding for basic retirement allowances and noncontributory death benefits. The Authority's contractually required contribution rate for the year ended December 31, 2020 and 2019 was 12.82% and 12.52%, respectively, of annual payroll, actuarially determined as an amount that, when combined with employee contributions, is expected to finance the costs of benefits earned by employees during the year, with an additional amount to finance any unfunded accrued liability.

It is assumed that the Local employers will contribute 100% of their actuarially determined contribution and 100% of their Non-Contributory Group Insurance Premium Fund (NCGIPF) contribution while the State will contribute 70% of its actuarially determined contribution and 100% of its NCGIPF contribution. The 70% contribution rate is the actual total State contribution rate paid in fiscal year ending June 30, 2019 with respect to the actuarially determined contribution for the fiscal year ending June 30, 2019 for all State administered retirement systems.

In accordance with Chapter 98, P.L. 2017, PERS receives 21.02% of the proceeds of the Lottery Enterprise for a period of 30 years. Revenues received from lottery proceeds are assumed to be contributed to the System on a monthly basis.

The Authority's contributions are due and payable on April 1st in the second fiscal period subsequent to plan year for which the contributions requirements were calculated.

Contractual contributions to the pension plan from the Authority were \$2,684,509 and \$2,242,154 for the years ended December 31, 2020 and 2019, respectively.

Pension Liabilities, Pension Expense, Deferred Outflows of Resources, and Deferred Inflows of Resources

GASB 68 requires the Authority to recognize a net pension liability for the difference between the present value of the projected benefits for past service, known as the Total Pension Liability ("TPL"), and the restricted resources held in trust for the payment of pension benefits, known as the Fiduciary Net Position ("FNP").

At December 31, 2020 and 2019, the Authority reported a liability of \$40.0 million and \$41.5 million for its proportionate share of the net pension liability for PERS, respectively. The net pension liability was measured as of June 30, 2020 and June 30, 2019, respectively, and the total pension liability used to calculate the net pension liability was determined by actuarial valuations as of July 1, 2019 and July 1, 2018. The actuarial valuations were rolled forward to June 30, 2020 and June 30, 2019 using update procedures.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

The Authority's proportion of the net pension liability was based on a projection of the long-term share of contribution to the pension plans relative to the projected contributions of all participating State agencies, actuarially determined. At December 31, 2020, the Authority's proportion was 0.2453960485%, which was an increase of .0148890608% from its proportion measured as of December 31, 2019. At December 31, 2019, the Authority's proportion was 0.2305069877%, which was a decrease of 0.0032315223%.

For the years ended December 31, 2020 and 2019, the Authority recognized pension expense of \$3,697,827 and \$4,677,788 for PERS, respectively. Pension expense is reported in the Authority's financial statements as part of salaries and benefits expense.

At December 31, 2020 and 2019, the Authority reported deferred outflows of resources and deferred inflows of resources related to pension from the following sources:

| | 2020 | | 2019 | |
|--|--------------------------------------|-------------------------------------|--------------------------------------|-------------------------------------|
| | Deferred Outflows of Resources | Deferred Inflows of Resources | Deferred Outflows of Resources | Deferred Inflows of Resources |
| Net difference between projected and actual earnings on pension plan investments | \$ 1,367,836 | \$ - | \$ - | \$ 655,628 |
| Changes of assumptions or other inputs | 1,298,219 | 16,755,781 | 4,147,309 | 14,416,272 |
| Changes in proportion | 3,507,707 | 784,918 | 3,135,899 | 1,052,381 |
| Difference between expected and actual experience | 728,656 | 141,520 | 745,478 | 183,478 |
| Contributions subsequent to the measurement date | 1,342,255 | - | 2,242,154 | - |
| | <u>\$ 8,244,673</u> | <u>\$ 17,682,219</u> | <u>\$ 10,270,840</u> | <u>\$ 16,307,759</u> |

Deferred outflows of resources of \$1,342,255 resulting from contributions subsequent to the measurement date will be recognized as a reduction of the net pension liability in the year ending December 31, 2021. Other amounts reported as deferred outflows of resources and deferred inflows of resources related to pensions will be recognized in pension expense as follows:

| | |
|---------------|------------------------|
| Year 1 (2021) | \$ (3,876,419) |
| Year 2 (2022) | (3,925,103) |
| Year 3 (2023) | (2,264,766) |
| Year 4 (2024) | (567,446) |
| Year 5 (2025) | (146,067) |
| | <u>\$ (10,779,801)</u> |

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

Actuarial Methods and Assumptions

The collective pension liability for the June 30, 2020 measurement date was determined by an actuarial valuation as of July 1, 2019, which was rolled forward to June 30, 2020. This actuarial valuation used the following assumptions:

June 30, 2020 and 2019

| | |
|----------------------------|-----------------------------|
| Inflation: | 2.75% (Price), 3.25% (Wage) |
| Salary increases: | |
| Through 2026 | 2.00 – 6.00% |
| | based on years of service |
| Thereafter | 3.00 – 7.00% |
| | based on years of service |
| Investment rate of return: | 7.00% |

Pre-retirement mortality tables were based on Pub-2010 General Below-Median Income Employee mortality table with an 82.2% adjustment for males and 101.4% adjustment for females, and with future improvement from the base year of 2010 on a generational basis. Post-retirement mortality rates were based on the Pub-2010 General Below-Median Income Healthy Retiree mortality table with a 91.4% adjustment for males and 99.7% adjustment for females, and with future improvement from the base year of 2010 on a generational basis.

Disability retirement rates used to value disabled retirees were based on the Pub-2010 Non-Safety Disabled Retiree mortality table with a 127.7% adjustment for males and 117.2% adjustment for females, and with future improvement from the base year of 2010 on a generational basis. Mortality improvement is based on Scale MP-2020.

The actuarial assumptions used in the July 1, 2019 and July 1, 2018 valuations were based on the results of an actuarial experience study for the period July 1, 2014 to June 30, 2018. It is likely that future experiences will not exactly conform to these assumptions. To the extent that actual experience deviates from these assumptions, the emerging liabilities may be higher or lower than anticipated. The more the experience deviates, the larger the impact on future financial statements.

In accordance with State statute, the long-term expected rate of return on plan investments (7.00% at June 30, 2020) is determined by the State Treasurer, after consultation with the Directors of the Division of Investment and Division of Pensions and Benefits, the board of trustees and the actuaries. The long-term expected rate of return on pension plan investments was determined using

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

a building block method in which best estimate ranges of expected future real rates of return (expected returns, net of pension plan investment expense and inflation) are developed for each major asset class. These ranges are combined to produce the long-term expected rate of return by weighting the expected future real rates of return by the target asset allocation percentage and by adding expected inflation. The target asset allocation and best estimate of arithmetic real rates of return for each major asset class are summarized in the following table:

| 2020 | | |
|---------------------------------|--------------------------|---|
| Asset Class | Target Allocation | Long-Term Expected Real Rate of Return |
| Risk mitigation | 3.00% | 3.40% |
| Cash | 4.00% | 0.50% |
| U.S Treasuries | 5.00% | 1.94% |
| Investment Grade Credit | 8.00% | 2.67% |
| High Yield | 2.00% | 5.95% |
| Private Credit | 8.00% | 7.59% |
| Real Assets | 3.00% | 9.73% |
| Real Estate | 8.00% | 9.56% |
| U.S. Equity | 27.00% | 7.71% |
| Non-US Developed Markets Equity | 13.50% | 8.57% |
| Emerging Markets Equity | 5.50% | 10.23% |
| Private Equity | 13.00% | 11.42% |

| 2019 | | |
|---------------------------------|--------------------------|---|
| Asset Class | Target Allocation | Long-Term Expected Real Rate of Return |
| Risk mitigation | 3.00% | 4.67% |
| Cash | 5.00% | 2.00% |
| U.S Treasuries | 5.00% | 2.68% |
| Investment Grade Credit | 10.00% | 4.25% |
| High Yield | 2.00% | 5.37% |
| Private Credit | 6.00% | 7.92% |
| Real Assets | 2.50% | 9.31% |
| Real Estate | 7.50% | 8.33% |
| U.S. Equity | 28.00% | 8.26% |
| Non-US Developed Markets Equity | 12.50% | 9.00% |
| Emerging Markets Equity | 6.50% | 11.37% |
| Private Equity | 12.00% | 10.85% |

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

Discount Rate

The discount rate used to measure the total pension liability was 7.00% and 6.28% at June 30, 2020 and June 30, 2019, respectively. This single blended discount rate was based on the long-term rate of return of 7.00% and the municipal bond rates of 2.21% and 3.50% as of June 30, 2020 and 2019, respectively, based on the Bond Buyer Go 20-Bond Municipal Bond Index which includes tax-exempt general obligation municipal bonds with an average rating of AA/Aa or higher. The contribution percentage is the average percentage of the annual actual contribution paid over the annual actuarially determined contribution during the most recent fiscal year.

Based on those assumptions, the pension Plan's fiduciary net position was projected to be available to make projected future benefit payments of current Plan members.

Sensitivity of the Authority's Proportionate Share of the Net Pension Liability to Changes in the Discount Rate

The following presents the Authority's proportionate share of the net pension liability calculated using the discount rate of 7.00% and 6.28% for PERS as well as the proportionate share of the net pension liability using a 1.00 percent increase or decrease from the current discount rate as of December 31, 2020 and 2019, respectively:

| | 1% Decrease (6.00%) | Discount Rate (7.00%) | 1% Increase (8.00%) |
|-------------|------------------------|--------------------------|------------------------|
| 2020 | \$ 50,375,581 | \$ 40,017,678 | \$ 31,228,714 |
| | 1% Decrease (5.28%) | Discount Rate (6.28%) | 1% Increase (7.28%) |
| 2019 | \$ 52,464,017 | \$ 41,533,862 | \$ 32,323,658 |

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

Plan Fiduciary Net Position

The plan fiduciary net position for PERS, including the State of New Jersey, at June 30, 2020 and 2019 were \$29,045,369,302 and \$29,847,977,666, respectively. The portion of the Plan Fiduciary Net Position that was allocable to the Local (Non-State) Group at June 30, 2020 and 2019 was \$22,997,176,445 and \$23,347,631,751, respectively.

Additional Information

Collective Local Group balances at June 30, 2020 are as follows:

| | |
|---|-----------------|
| Collective deferred outflows of resources | \$2,347,583,337 |
| Collective deferred inflows of resources | 7,849,949,467 |
| Collective net pension liability | 16,435,616,426 |
| Authority's proportion | 0.2453960485% |

Collective Local Group pension expense for the Local Group for the measurement period ended June 30, 2020 and 2019 was \$407,705,399 and \$974,471,686, respectively. The average of the expected remaining service lives of all plan members is 5.16, 5.21, 5.63, 5.48, 5.57, 5.72 and 6.44 years for the 2020, 2019, 2018, 2017, 2016, 2015, and 2014 amounts, respectively.

State Contribution Payable Dates

Prior to July 1, 2019 valuation, it is assumed the State will make pension contributions the June 30th following the valuation date. Effective with the July 1, 2019 valuation Chapter 83 P.L. 2016 requires the State to make pension contributions on a quarterly basis at least 25% by September 30, at least 50% by December 31st, at least 75% by March 31st, and at least 100% by June 30th.

Receivable Contribution

The Fiduciary Net Position (FNP), includes Local employers' contributions receivable as reported in the financial statements provided by the Division of Pensions and Benefits. In determining the discount rate, the FNP at the beginning of each year does not reflect receivable contributions as those amounts are not available at the beginning of the year to pay benefits. The receivable contributions for the years ended June 30, 2020 and June 30, 2019 are \$1,144,889,253 and \$1,038,892,124, respectively.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

Detailed information about the Plan's fiduciary net position is available in a separately issued financial report. The State of New Jersey, Department of the Treasury, Division of Pension and Benefits, issues publicly available financial reports that include the financial statements and required supplementary information for the PERS. Information on the total Plan funding status and progress, required contributions and trend information is available on the State's web site at www.state.nj.us/treasury/pensions/annrprts.shtml in the Comprehensive Annual Financial Report of the State of New Jersey, Division of Pensions and Benefits.

(b) Postemployment Health Care and Insurance Benefits

General Information about the Postemployment Health Care Plan

Plan Description and Benefits Provided: The Authority sponsors a single employer postemployment benefits plan that provides benefits in accordance with State statute, through the State Health Benefits Plan, to its retirees having 25 years or more of service in the PERS, and 30 years or more of service if hired after June 28, 2011, or to employees approved for disability retirement. Health benefits and prescription benefits provided by the plan are at no cost to eligible retirees who had accumulated 20 years of service credit as of June 30, 2010. All other future retirees will contribute to a portion of their health and prescription premiums. Upon turning 65 years of age, a retiree must utilize Medicare as their primary coverage, with State Health Benefits providing supplemental coverage. In addition, life insurance is provided at no cost to the Authority and the retiree in an amount equal to 3/16 of their average salary during the final 12 months of active employment.

The Authority participates in the State Health Benefits Plan solely on the benefits side and not in a cost-sharing capacity, in order to leverage more affordable premium costs. The Authority maintains all plan assets within the Employee Benefit Trust. The State of New Jersey, Department of the Treasury, Division of Pension and Benefits, issues publicly available financial reports that include the financial statements for the State Health Benefits Program Funds. The financial reports may be obtained by writing to the State of New Jersey, Department of the Treasury, Division of Pension and Benefits, P.O. Box 295, Trenton, New Jersey, 08625-0295. The State has the authority to establish and amend the benefit provisions offered and contribution requirements.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

Employees Covered by Benefit Terms. At December 31, 2020 and 2019, the following employees were covered by the benefit terms:

| | 2020 | 2019 |
|--|-------------|-------------|
| Active employees | 243 | 163 |
| Inactive employees and/or beneficiaries currently receiving benefit payments | 45 | 39 |
| Total membership | 288 | 202 |

Contributions. The Authority's Board grants the Authority the right to establish and amend the contribution requirements. The Board establishes rates based on an actuarially determined rate. For the year ended December 31, 2020 and 2019, the Authority's average contribution rate was 2.87 percent and 2.78 percent of covered payroll, respectively. Employees are not required to contribute to the plan. The Authority's annual OPEB cost for the plan is calculated based on the Entry Age Normal level percentage cost method, an amount actuarially determined in accordance with the parameters of GASB Statement 75. The Authority has established and funded an irrevocable trust for the payments required by this obligation.

Net OPEB (Asset) Liability

The Authority's net OPEB (asset) liability was measured at December 31, 2020 and the total OPEB liability used to calculate the net OPEB (asset) liability was determined by an actuarial valuation as of January 1, 2021.

Actuarial Assumptions. The total OPEB liability in the January 1, 2021 actuarial valuation was determined using the following actuarial assumptions, applied to all periods included in the measurement, unless otherwise specified:

| | |
|-----------------------------|---|
| Inflation | 2.3% per annum, compounded annually |
| Salary increases | 3.5% per annum, compounded annually |
| Investment rate of return | 4.50% |
| Healthcare cost trend rates | 5.8% grading down to an ultimate rate of 4.5% for <65, 5.8% grading down to an ultimate rate of 4.5% for >65 |

Mortality rates were based on the Pub-2010 General Below-Median Income mortality tables and Pub-2010 Non-Safety Disabled Retiree mortality table adjusted to reflect Mortality Improvement Scale MP-2018 from 2010 base year and projected forward on a generational basis.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

The actuarial assumptions used in the January 1, 2021 valuation were based on information provided by the Authority for the period of January 1, 2020 through December 31, 2020.

The long-term expected rate of return on OPEB plan investments was determined using a building-block method in which best-estimate ranges of expected future real rates of return (expected returns, net of OPEB plan investment expense and inflation) are developed for each major asset class. These ranges are combined to produce the long-term expected rate of return by weighting the expected future real rates of return by the target asset allocation percentage and by adding expected inflation of 2.17%. The target allocation and best estimates of arithmetic real rates of return for each major asset class are summarized in the following table:

| 2020 | | | |
|---------------------|-----------------------|-------------------|--|
| Asset Class | Index | Target Allocation | Long-Term Expected Real Rate of Return |
| US cash | BAML 3-month treasury | 5.20% | 2.94% |
| US government bonds | Barclays government | 40.58% | 2.28% |
| US credit bonds | Barclays credit | 36.71% | 4.11% |
| US municipal bonds | Barclays muni index | 4.19% | 3.74% |
| US Large Caps | S&P 500 | 0.64% | 8.36% |
| US Equity Market | Russel 3000 | 12.08% | 8.36% |
| US Small Caps | Russel 2000 | 0.60% | 9.54% |
| Total | | 100.00% | |

| 2019 | | | |
|---------------------|-----------------------|-------------------|--|
| Asset Class | Index | Target Allocation | Long-Term Expected Real Rate of Return |
| US cash | BAML 3-month treasury | 5.20% | 1.40% |
| US government bonds | Barclays government | 40.58% | 0.78% |
| US credit bonds | Barclays credit | 36.71% | 2.68% |
| US municipal bonds | Barclays muni index | 4.19% | 2.17% |
| US Large Caps | S&P 500 | 0.64% | 6.05% |
| US Equity Market | Russel 3000 | 12.08% | 6.05% |
| US Small Caps | Russel 2000 | 0.60% | 7.23% |
| Total | | 100.00% | |

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

Discount Rate. The discount rate used to measure the total OPEB liability was 4.5 percent at December 31, 2020 and December 31, 2019. The projection of cash flows used to determine the discount rate assumed that Authority contributions will be made at rates equal to the actuarially determined contribution rates. Based on those assumptions, the OPEB plan's fiduciary net position was projected to be available to make all projected OPEB payments for current active and inactive employees. Therefore, the long-term expected rate of return on OPEB plan investments was applied to all periods of projected benefit payments to determine the total OPEB liability.

Changes in Net OPEB (Asset) Liability

For the year ended December 31, 2020:

| | Increase (Decrease) | | |
|---|---------------------------------|--|---------------------------------------|
| | Total OPEB Liability | Plan Fiduciary Net Position | Net OPEB (Asset) Liability |
| Net OPEB (asset) liability at the beginning of the year | \$ 20,911,955 | \$ 41,248,399 | \$ (20,336,444) |
| Changes for the year: | | | |
| Service cost | 891,324 | - | 891,324 |
| Interest | 971,162 | - | 971,162 |
| Employer contributions | - | 448,747 | (448,747) |
| Net investment income | - | 3,091,566 | (3,091,566) |
| Benefit payments | (448,747) | (448,747) | - |
| Administrative expense | - | (11,300) | 11,300 |
| Net changes | <u>1,413,739</u> | <u>3,080,266</u> | <u>(1,666,527)</u> |
| Net OPEB (asset) liability at the end of the year | <u>22,325,694</u> | <u>44,328,665</u> | <u>(22,002,971)</u> |

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

For the year ended December 31, 2019:

| | Increase (Decrease) | | |
|---|---------------------------------|--|---------------------------------------|
| | Total OPEB Liability | Plan Fiduciary Net Position | Net OPEB (Asset) Liability |
| Net OPEB (asset) liability at the beginning of the year | \$ 37,723,000 | \$ 37,944,957 | \$ (221,957) |
| Changes for the year: | | | |
| Service cost | 1,703,075 | - | 1,703,075 |
| Interest | 1,764,822 | - | 1,764,822 |
| Changes of assumptions | (19,858,717) | - | (19,858,717) |
| Employer contributions | - | 420,225 | (420,225) |
| Net investment income | - | 3,324,504 | (3,324,504) |
| Benefit payments | (420,225) | (420,225) | - |
| Administrative expense | - | (21,062) | 21,062 |
| Net changes | (16,811,045) | 3,303,442 | (20,114,487) |
| Net OPEB (asset) liability at the end of the year | 20,911,955 | 41,248,399 | (20,336,444) |

Sensitivity of the Net OPEB (Asset) Liability to Changes in the Discount Rate. The following presents the net OPEB (asset) liability of the Authority as of December 31, 2020 and 2019, as well as what the Authority's net OPEB (asset) liability would be if it were calculated using a discount rate that is 1-percentage-point lower (3.5% for 2020 and 2019) or 1-percentage-point higher (5.5% for 2020 and 2019) than the current discount rate:

| | 1% Decrease (3.5%) | Discount Rate (4.5%) | 1% Increase (5.5%) |
|-------------|-------------------------------|---------------------------------|-------------------------------|
| 2020 | \$ (17,969,347) | \$ (22,002,971) | \$ (25,231,692) |
| | 1% Decrease (3.5%) | Discount Rate (4.5%) | 1% Increase (5.5%) |
| 2019 | \$ (16,535,298) | \$ (20,336,444) | \$ (23,377,963) |

Sensitivity of the Net OPEB (Asset) Liability to Changes in the Healthcare Cost Trend Rates. The following presents the net OPEB (asset) liability of the Authority as of December 31, 2020 and 2019, as well as what the Authority's net OPEB (asset) liability would be if it were calculated using healthcare cost trend rates that are 1-percentage-point lower (4.8% decreasing to 3.5% in

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

2020 and 2019) or 1-percentage-point higher (6.8% decreasing to 5.5% in 2020 and 2019) than the current healthcare cost trend rates (5.8% decreasing to 4.5% in 2020 and 2019):

| | 1% Decrease (4.8% decreasing to 3.5%) | Healthcare Cost Trend Rates (5.8% decreasing to 4.5%) | 1% Increase (6.8% decreasing to 5.5%) |
|-------------|--|--|--|
| 2020 | \$ (25,891,708) | \$ (22,002,971) | \$ (16,915,036) |
| | 1% Decrease (4.8% decreasing to 3.5%) | Healthcare Cost Trend Rates (5.8% decreasing to 4.5%) | 1% Increase (6.8% decreasing to 5.5%) |
| 2019 | \$ (23,829,799) | \$ (20,336,444) | \$ (15,794,427) |

OPEB Plan Fiduciary Net Position. Detailed information about the OPEB plan's fiduciary net position is available in the separately issued NJEDA Employee Benefit Trust financial report, which is available on the Authority's website at www.njeda.com/public_information/annual_reports.

**OPEB Expense and Deferred Outflows of Resources and Deferred Inflows of Resources
Related to OPEB**

For the years ended December 31, 2020 and 2019, the Authority recognized OPEB expense (income) of \$(2,766,378) and \$(272,107), respectively. OPEB expense is reported in the Authority's financial statements as part of salaries and benefits expense. At December 31, 2020, the Authority reported deferred outflows of resources and deferred inflows of resources related to OPEB from the following sources:

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

| | 2020 | | 2019 | |
|---|-----------------------------|------------------------------|-----------------------------|------------------------------|
| | Deferred Inflows | Deferred Outflows | Deferred Inflows | Deferred Outflows |
| Difference in experience | \$ (225,644) | \$ - | \$ (255,020) | \$ - |
| Changes in assumptions | (18,272,042) | - | (20,601,497) | - |
| Net difference between projected and actual earnings on OPEB plan investments | (1,278,173) | | - | 118,214 |
| Totals | <u>\$ (19,775,859)</u> | <u>\$ -</u> | <u>\$ (20,856,517)</u> | <u>\$ 118,214</u> |

Amounts reported as deferred outflows of resources and deferred inflows of resources related to OPEB will be recognized in OPEB expense (income) as follows:

Year Ended December 31:

| | |
|------------|------------------------|
| 2021 | \$ (2,509,141) |
| 2022 | (2,668,949) |
| 2023 | (2,929,449) |
| 2024 | (2,605,958) |
| 2025 | (2,358,831) |
| Thereafter | (6,703,531) |
| Total | <u>\$ (19,775,859)</u> |

Note 11: Compensated Absences

In accordance with GASB Statement No. 16, *Accounting for Compensated Absences*, the Authority recorded noncurrent liabilities in the amount of \$1,883,432 and \$1,221,858 as of December 31, 2020 and 2019, respectively. The liability as of those dates is the value of employee accrued vacation time and vested estimated sick leave benefits that are probable of payment to employees upon retirement. The vested sick leave benefit to eligible retirees for unused accumulated sick leave is calculated at the lesser of ½ the value of earned time or \$15,000. The payment of sick leave benefits, prior to retirement, is dependent on the occurrence of sickness as defined by Authority policy; therefore, such non-vested benefits are not accrued.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

Note 12: Long-Term Liabilities

During 2020 and 2019, the following changes in long-term liabilities are reflected in the statement of net position:

| 2020 | | | | |
|-----------------------------|------------------------------|---------------------|-----------------------|---------------------------|
| | Beginning Balance | Additions | Deductions | Ending Balance |
| Net pension liability | \$ 41,533,862 | \$ — | \$ (1,516,184) | \$ 40,017,678 |
| Unearned lease revenue | 5,797,162 | — | (1,054,847) | 4,742,315 |
| Accrued guarantee losses | 256,700 | 4,388,191 | (134,638) | 4,510,253 |
| Compensated absences | 1,221,858 | 717,408 | (55,834) | 1,883,432 |
| Total long-term liabilities | <u>\$ 48,809,582</u> | <u>\$ 5,105,599</u> | <u>\$ (2,761,503)</u> | <u>\$ 51,153,678</u> |

| 2019 | | | | |
|-----------------------------|------------------------------|-------------------|-----------------------|---------------------------|
| | Beginning Balance | Additions | Deductions | Ending Balance |
| Net pension liability | \$ 46,021,947 | \$ — | \$ (4,488,085) | \$ 41,533,862 |
| Unearned lease revenue | 6,850,011 | — | (1,052,849) | 5,797,162 |
| Accrued guarantee losses | 427,609 | — | (170,909) | 256,700 |
| Compensated absences | 1,173,849 | 128,309 | (80,300) | 1,221,858 |
| Total long-term liabilities | <u>\$ 54,473,416</u> | <u>\$ 128,309</u> | <u>\$ (5,792,143)</u> | <u>\$ 48,809,582</u> |

For further information, see Notes 10 and 11.

Note 13: Risk Management

The Authority is exposed to various risks of loss related to torts; theft of, and destruction of assets; errors and omission; injuries to employees; and natural disasters. The Authority maintains commercial insurance coverage covering each of those risks of loss. Management believes such coverage is sufficient to preclude any significant uninsured losses to the Authority. Settled claims have not exceeded the commercial coverage provided in any of the last three years.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)

Notes to Financial Statements (continued)

December 31, 2020 and 2019

Note 14: Subsequent Events

As the Authority's programmatic efforts continue in response to the COVID-19 pandemic, the Authority received two appropriations in 2021 from the State of New Jersey's Federal CARES Act allocation for purposes of continuing the Business Emergency Grant Program and the Sustain & Serve Grant Program, two initiatives that were developed in direct response to the pandemic. These appropriations totaled \$87,400,000.

In April 2021, Governor Phil Murphy signed into law several bills that appropriated additional funding to the NJEDA to provide relief to small businesses impacted by the pandemic. To implement those new laws, the NJEDA's Board approved Phase 4 of the Small Business Emergency Assistance Grant Program on April 14. The NJEDA accepted applications from May 3 through May 19 and received nearly 30,000 applications. On June 22, the Governor signed legislation that provided \$200 million in additional funding from the State of New Jersey General Fund, which was received on June 24. The Governor subsequently signed legislation allocating \$125 million in additional funding from the Coronavirus State Fiscal Recovery Funds (CSFRF); the NJEDA has received \$120 million of those funds through the date of this report.

Required Supplementary Information

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)
Required Supplementary Information

Schedule of Changes in the Authority's Net OPEB Liability (Asset) and Related Ratios

| | 2020 | 2019 | 2018 | 2017 | 2016 |
|---|-------------------|-------------|-----------|-----------|-----------|
| | (\$ In Thousands) | | | | |
| Service cost | \$ 891 | \$ 1,703 | \$ 1,967 | \$ 1,900 | \$ 1,836 |
| Interest | 972 | 1,765 | 1,606 | 1,492 | 1,387 |
| Change in assumptions | - | (19,859) | (3,730) | - | - |
| Benefit payments | (449) | (420) | (588) | (643) | (655) |
| Net change in total OPEB liability | 1,414 | (16,811) | (745) | 2,749 | 2,568 |
| Total OPEB liability - beginning | 20,912 | 37,723 | 38,468 | 35,719 | 33,151 |
| Total OPEB liability - ending (a) | \$ 22,326 | \$ 20,912 | \$ 37,723 | \$ 38,468 | \$ 35,719 |
| Plan fiduciary net position | | | | | |
| Contributions - employer | \$ 449 | \$ 420 | \$ 5,307 | \$ 1,220 | \$ 1,162 |
| Net investment income | 3,092 | 3,325 | 86 | 486 | 382 |
| Benefit payments | (449) | (420) | (588) | (643) | (655) |
| Administrative expenses | (11) | (22) | (21) | (21) | (21) |
| Net change in plan fiduciary net position | 3,081 | 3,303 | 4,784 | 1,042 | 868 |
| Plan fiduciary net position - beginning | 41,248 | 37,945 | 33,161 | 32,119 | 31,251 |
| Plan fiduciary net position - ending (b) | \$ 44,329 | \$ 41,248 | \$ 37,945 | \$ 33,161 | \$ 32,119 |
| Authority's net OPEB (asset) liability - ending (a) - (b) | \$ (22,003) | \$ (20,336) | \$ (222) | \$ 5,307 | \$ 3,600 |
| Plan fiduciary net position as a percentage of the total OPEB liability | 198.55% | 197.25% | 100.59% | 86.20% | 89.92% |
| Covered payroll | \$ 15,652 | \$ 15,123 | \$ 14,483 | \$ 14,108 | \$ 16,246 |
| Authority's net OPEB liability (asset) as a percentage of covered payroll | (140.58)% | (134.47)% | (1.53)% | 37.62% | 22.16% |

Notes to Schedule:

Changes of assumptions: In 2020, the changes of assumptions decreased from \$19.7m to \$0.

This schedule is intended to show information for 10 years. Additional years will be displayed as they become available.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)
Required Supplementary Information

Schedule of the Authority's OPEB Contributions

(\$ in thousands)

| | 2020 | 2019 | 2018 | 2017 | 2016 | 2015 | 2014 | 2013 | 2012 | 2011 |
|--|-----------------|-----------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Actuarial determined contribution | \$ - | \$ 1,849 | \$ 5,307 | \$ 1,220 | \$ 1,162 | \$ 9,014 | \$ 891 | \$ 850 | \$ 3,327 | \$ 806 |
| Employer contribution | 449 | 420 | 5,307 | 1,220 | 1,162 | 9,014 | 891 | 850 | 3,327 | 806 |
| Contribution deficiency (excess) | <u>\$ (449)</u> | <u>\$ 1,429</u> | <u>\$ -</u> | <u>\$ -</u> | <u>\$ -</u> | <u>\$ -</u> | <u>\$ -</u> | <u>\$ -</u> | <u>\$ -</u> | <u>\$ -</u> |
| Authority's covered payroll | \$ 15,652 | \$ 15,123 | \$ 14,483 | \$ 14,108 | \$ 16,246 | \$ 15,819 | \$ 14,535 | \$ 10,971 | \$ 10,472 | \$ 12,062 |
| Contributions as percentage of covered payroll | 2.87% | 2.78% | 36.64% | 8.65% | 7.15% | 56.98% | 6.13% | 7.75% | 31.77% | 6.68% |

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)
Required Supplementary Information

Employee Benefit Trust
Schedule of Investment Returns

| | 2020 | 2019 | 2018 | 2017 | 2016 |
|---|-------|-------|-------|-------|-------|
| Annual money-weighted rate of return, net of investment expense | 7.26% | 8.44% | 0.28% | 1.50% | 1.22% |

This schedule is intended to show information for 10 years. Additional years will be displayed as they become available.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)
Required Supplementary Information

Notes to Schedule of the Authority's OPEB Contributions

Notes to Schedule:

| | |
|----------------|---|
| Valuation Date | January 1, 2021 for 2020; January 1, 2020 for 2019; January 1, 2017 for years 2018, 2017 and 2016, January 1, 2015 for 2015; January 1, 2012 for years 2012-2014; January 1, 2009 for years 2009-2011. |
|----------------|---|

Methods and assumptions used to determine the actuarially determined contribution rates:

| | |
|---------------------------|--|
| Actuarial Cost Method | Entry Age Normal for 2020, 2019, 2018, 2017 and 2016, Project Unit Credit Cost Method for 2011-2015 |
| Amortization Method | Full recognition of unfunded liability as of December 31 for 2020, 2019, 2018, 2017 and 2016, Level Dollar Open (1 year) for 2011-2015 |
| Asset Valuation Method | Market value |
| Inflation Rate | 2.3% for 2020, 2019, 2018, 2017 and 2016, not indicated for 2011-2015 |
| Investment Rate of Return | 4.5% for 2020, 2019 and 2018, 4.0% for all years prior |

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)
Required Supplementary Information

Schedule of the Authority's Proportionate Share of the Net Pension Liability

| | 2020 | 2019 | 2018 | 2017 | 2016 | 2015 | 2014 |
|---|----------------------|---------------|---------------|---------------|---------------|---------------|---------------|
| | PERS | PERS | PERS | PERS | PERS | PERS | PERS |
| Authority's proportion of the net pension liability | 0.24540% | 0.23051% | 0.23374% | 0.23691% | 0.22645% | 0.21713% | 0.15290% |
| Authority's proportionate share of the net pension liability | \$ 40,017,678 | \$ 41,533,862 | \$ 46,021,947 | \$ 55,148,355 | \$ 67,068,246 | \$ 48,740,925 | \$ 28,627,890 |
| Authority's covered payroll | \$ 20,932,830 | \$ 17,904,605 | \$ 16,464,640 | \$ 16,199,280 | \$ 16,245,862 | \$ 15,434,227 | \$ 12,440,364 |
| Authority's proportionate share of the net pension liability as a percentage of its covered payroll | 191.17% | 231.97% | 279.52% | 340.44% | 412.83% | 315.80% | 230.12% |
| Plan fiduciary net position as a percentage of the total pension liability | 42.90% | 42.04% | 40.45% | 36.78% | 31.20% | 38.21% | 42.74% |

The amounts presented for each fiscal year were determined as of the previous fiscal year end.

This schedule is intended to show information for 10 years. Additional years will be displayed as they become available.

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)
Required Supplementary Information

Schedule of the Authority's Contributions to the Public Employees' Retirement System (PERS)

| | 2020 | 2019 | 2018 | 2017 | 2016 | 2015 | 2014 | 2013 | 2012 | 2011 |
|--|----------------------|--------------|--------------|---------------|--------------|---------------|---------------|---------------|---------------|---------------|
| Contractually required contribution | \$ 2,684,509 | \$ 2,242,154 | \$ 2,324,943 | \$ 2,194,698 | \$ 2,011,757 | \$ 1,866,720 | \$ 1,260,522 | \$ 1,137,100 | \$ 1,188,900 | \$ 1,262,300 |
| Contributions in relation to the contractually required contribution | 2,684,509 | 2,242,154 | 2,324,943 | 2,194,698 | 2,011,757 | 1,866,720 | 1,260,522 | 1,137,100 | 1,188,900 | 1,262,300 |
| Contribution deficiency (excess) | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
| Authority's covered payroll | \$ 20,932,830 | \$17,904,605 | \$16,464,640 | \$ 16,184,953 | \$16,245,862 | \$ 15,818,820 | \$ 14,535,358 | \$ 10,970,510 | \$ 10,472,305 | \$ 12,062,333 |
| Contributions as a percentage of covered payroll | 12.82% | 12.52% | 14.12% | 13.56% | 12.38% | 11.80% | 8.67% | 10.37% | 11.35% | 10.46% |

New Jersey Economic Development Authority
(a component unit of the State of New Jersey)
Required Supplementary Information

Notes to Schedule of the Authority's Contributions to the Public Employees'
Retirement System (PERS)

Notes to Schedule

Valuation Date Actuarially determined contribution rates are calculated as of July 1, one year prior to the end of the fiscal year in which the contributions are reported.

Methods and assumptions used to determine the actuarially determined employer contributions are as follows:

| | |
|-------------------------------|--|
| Actuarial Cost Method | Projected Unit Credit Method |
| Amortization Method | Level Dollar Amortization |
| Remaining Amortization Period | 30 years |
| Asset Valuation Method | A five year average of market value |
| Investment Rate of Return | 7.30% for 2020 and 2019, 7.50% for 2018 and 2017, 7.65% for 2016, 7.9% for 2015, 2014 and 2013, 7.95% for 2012, 8.25% for 2011 |
| Inflation | 2.75% (Price), 3.25% (Wage) |
| Salary Increases | None for 2020 and 2019, 1.65% – 5.15% for 2018, 2017 and 2016, 2.15% – 5.40% for 2015 through 2013, 4.52% for 2012, 5.45% for 2011 |
| Mortality | Pub-2010 General Below-Median Income Employee mortality table for male and female active participants. Mortality tables are adjusted for males and for females. In addition, the tables provide for future improvements in mortality from the base year of 2010 using a generational approach based on the plan actuary's modified MP-2020 projection scale. |

Resolution of the New Jersey Economic Development
Authority Regarding Approval of the 2020
Comprehensive Annual Report

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

WHEREAS, the Members are requested to adopt a resolution adopting the Fiscal Plan, as outlined and explained in said Memorandum and Fiscal Plan.

NOW, THEREFORE, BE IT RESOLVED by the Members of the New Jersey Economic Development Authority as follows:

1. The Fiscal Plan, attached hereto, is hereby approved.
2. The Fiscal Plan and Memorandum, attached hereto, are 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: December 8, 2021

EXHIBIT



To: Members of the Authority

From: Tim Sullivan, Chief Executive Officer

Date: December 8, 2021

Subject: FY 2022 Fiscal Plan

Enclosed for your review and consideration is the proposed FY22 Fiscal Plan. It is the result of a collaborative effort by senior management and staff. Collectively, we believe our discussions have yielded a fiscally responsible plan in support of the Authority's role as a comprehensive development agency while best positioning the organization to support the strategic priorities of the statewide economic development plan, including investing in people, investing in communities, making New Jersey the State of Innovation, and making government work better to improve the State's competitiveness and business climate.

Underlying these goals are several key imperatives for the Authority: 1) to continue to support businesses adversely impacted by the COVID-19 pandemic; 2) to grow New Jersey's economy, with a focus on increasing broad-based equity and creating a pilot, learn, scale culture, supported by bank-like operations; 3) to advance a financially sustainable business platform, optimizing for a balance of State economic activity and fiscal stability of the Authority; and 4) to support our effectiveness through enhanced resources, infrastructure, and compliance. These imperatives are woven through the Fiscal Plan's revenue and program cost projections, and administrative expense constraints, respectively.

The proposed 2022 Fiscal Plan represents an ongoing investment in terms of staffing up for exciting, new initiatives; and, at the same time, maintaining our focus on critical assistance programs necessitated by COVID-19. Taking into consideration the Authority's organizational transformation, as well as the Murphy Administration's prioritized initiatives, we are projecting operating revenue to exceed 2021 Plan, before anticipating other state and federal reimbursements of administrative expenses. Relative to administrative expenses, the Authority is committed to accomplishing its strategic objectives and alignment with the statewide economic development plan in the most efficient manner possible. This includes the continued build out of new divisions of the Authority, to oversee the management and deployment of numerous state and federal appropriations across various programs. To that end, EDA core headcount will reflect an increase from 272 projected for FY21 to 295 by the end of FY22, including recruiting for positions related to the implementation of new projects and initiatives, and specific programmatic activity.

The FY 22 Plan is presented as break-even and anticipates various reimbursements from state and federal sources to effectuate completion of vital emergency business assistance programs and other exciting new initiatives. Other significant, anticipated revenue infusions are related to the State's participation in the regional greenhouse gas initiative, and Authority efforts such as Offshore Wind and NJ Emerge and Aspire tax credit programs, as well as the Main Street program. In many of these initiatives the Authority anticipates a combination of fee income or reimbursement of eligible personnel expenses directly related to the administration of specific programs.

Also reflected are the following benefit expense items:

- The EDA contribution to PERS is based on billing information from the Division of Pensions. Any amount that can be attributable to certain program-dedicated staff will be sought as a reimbursable fringe item;
- Health insurance premiums reflect an increase of 2% over 2021, depending on plan and level of coverage selected, however, approx 34% of total premiums are expected to be paid by employees, enabling the Authority to recapture over \$1,200,000 of this cost;
- For the second straight year, there is no anticipated contribution to the post-employment benefit trust, as the most recent actuarial valuation indicates the trust is sufficiently funded, creating a savings of approx \$2 million from recent year's Plans.

Program Costs represent expenditures that align with specific programs, projects, and initiatives. At \$10,077,000, the FY22 Plan provides an increase from FY21 Plan, related to legal representation through the Division of Law, while continuing to provide for important compliance and incentive program audits as well as necessary outreach expenditures aimed at diversity and inclusion. Other costs such as asset management expenditures are generally consistent with the prior year Plan. General and administrative expenses include support for professional development and training, necessary software, and expanded liability insurance coverage for ever-present cybersecurity risks.

Consistent with prior years, the Plan also includes cash transactional items that may or may not be reimbursable; do not represent costs and expenses related specifically to current year production; or may not be within the scope of what the Authority typically does. These items are presented *below* the NOE for informational purposes. Included here are the reimbursable personnel expenses related to administration of Fort Monmouth, Office of Recovery, CSIT and Wind port activity. Also reflected here are long-term projects such as the New Jersey Bioscience Center re-design; modification of specific EDA offices; and remaining pre-development costs associated with the Myer Center property at Fort Monmouth.

The compilation of the 2022 Fiscal Plan has been a collective process that interrelates with and supports the Authority's key strategic imperatives. At its meeting of November 23rd, the Plan was reviewed by the Audit Committee which concurred it is fiscally responsible and supports the Authority's mission; accordingly, the Board's approval is requested.


Tim Sullivan, CEO

Prepared by:

Richard LoCascio, CPA
Controller

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

11/29/21

2022 FISCAL PLAN

| | 2021 Fiscal Plan | 2021 Projected Actual | Actual Over/(Under) Plan | % Variance | 2022 Fiscal Plan | '22 Plan to '21 Plan % Variance |
|--------------------------------------|------------------------|-----------------------------|--------------------------------|---------------|------------------------|--|
| Operating Revenue: | | | | | | |
| Financing Fees | \$7,158,000 | \$4,544,000 | (\$2,614,000) | | \$11,025,000 | |
| Lease Revenue | 7,383,000 | 7,538,400 | 155,400 | | 8,144,000 | |
| Interest from Notes | 5,100,000 | 4,900,000 | (200,000) | | 5,000,000 | |
| Agency Fees | 601,000 | 598,500 | (2,500) | | 706,000 | |
| Program Services | 5,501,000 | 3,550,000 | (1,951,000) | | 3,950,000 | |
| Venture Fund Distributions/Warrants | 871,000 | 1,847,900 | 976,900 | | 3,930,000 | |
| Real Estate Development Fees | 3,511,000 | 1,691,300 | (1,819,700) | | 4,595,000 | |
| Late Fees and Other | 518,000 | 145,000 | (373,000) | | 50,000 | |
| Total Operating Revenue | 30,643,000 | 24,815,100 | (5,827,900) | -19.0% | 37,400,000 | 22.1% |
| Non Operating Revenue: | | | | | | |
| Interest from Cash Investments | 2,250,000 | 4,563,000 | 2,313,000 | | 3,500,000 | |
| Grant Revenue | | 2,353,500 | 2,353,500 | | | |
| Federal/State Reimbursements * | 5,000,000 | 6,200,000 | 1,200,000 | | 6,450,000 | |
| Other Sources & Cash Infusions | 1,920,000 | 1,000,000 | (920,000) | | 4,710,000 | |
| Total Non Operating Revenue | 9,170,000 | 14,116,500 | 4,946,500 | 53.9% | 14,660,000 | 59.9% |
| Total Revenue | 39,813,000 | 38,931,600 | (881,400) | -2.2% | 52,060,000 | 30.8% |
| Administrative Expenses | | | | | | |
| Personnel and Benefits | 29,995,000 | 30,071,300 | 76,300 | | 35,232,000 | |
| General and Administrative | 4,688,000 | 4,757,400 | 69,400 | | 6,751,000 | |
| Total Administrative Expenses | 34,683,000 | 34,828,700 | 145,700 | 0.4% | 41,983,000 | 21.0% |
| Program Specific Costs | 9,230,000 | 8,587,900 | (642,100) | -7.0% | 10,077,000 | 9.2% |
| Total Expenses & Costs | 43,913,000 | 43,416,600 | (496,400) | -1.1% | 52,060,000 | 18.6% |
| Net Operating Earnings | (\$4,100,000) | (\$4,485,000) | (\$385,000) | | \$ - | |

CASH TRANSACTIONAL ITEMS

| | | | | |
|--|----------------------|----------------------|--------------------|----------------------|
| Operating Revenue: | | | | |
| FMERO Staff Reimbursement | \$1,225,000 | \$1,197,000 | (\$28,000) | \$1,262,000 |
| Loss recoveries | | 300,000 | 300,000 | |
| Total Operating Revenue | 1,225,000 | 1,497,000 | 272,000 | 1,262,000 |
| Administrative Expenses | | | | |
| FMERO Personnel & Benefits | 1,225,000 | 1,197,000 | (28,000) | 1,262,000 |
| Office of Recovery Personnel & Benefits | 1,750,000 | 1,558,000 | (192,000) | 1,621,000 |
| *(Reimbursement due for OR Personnel) | (1,750,000) | (1,558,000) | 192,000 | (1,621,000) |
| NJ Comm on Science & Innov Tech | 350,000 | 275,000 | (75,000) | 345,000 |
| *(Reimbursement due for CSIT Personnel) | (350,000) | (275,000) | 75,000 | (345,000) |
| Wind Port and Wind Institute Initiatives | | 900,000 | 900,000 | 1,107,000 |
| *(Reimbursement due for Wind Personnel) | | (900,000) | (900,000) | (1,107,000) |
| NJEDA Offices-Modifications/Reconfigurations | 250,000 | 1,231,700 | 981,700 | 155,000 |
| ERP Procurement and Phase II | 350,000 | | (350,000) | |
| Program Costs | | | | |
| NJBC / Tech V Plan/Design | 2,500,000 | | (2,500,000) | 3,500,000 |
| Myer Center Pre-Development | 85,000 | 28,500 | (56,500) | 100,000 |
| Technical Assistance | 300,000 | 300,000 | | 300,000 |
| Total Expenses & Costs | 4,710,000 | 2,757,200 | (1,952,800) | 5,317,000 |
| Net Cash Transactional Items | (\$3,485,000) | (\$1,260,200) | \$2,224,800 | (\$4,055,000) |

* **Note:** Reimbursement due for Core EDA staff devoting time to certain activity is reflected as an increase to *net assets upon* receipt, as is full reimbursement for specific, dedicated programmatic personnel & benefits. For calendar year 2021, the EDA anticipates **\$6 million** in cash infusions through federal CARES Act reimbursement solely for personnel expense; and for 2022 anticipates similar reimbursements from other state and federal sources. These dollars are presented as a non-operating revenue item for Fiscal Plan purposes, although may be presented as an increase to net assets in the audited financial statements.

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

2022 FISCAL PLAN

| | Revenue Detail | | | | | '22 Plan to '21 Plan % Variance |
|---|------------------------|-----------------------------|--------------------------------|---------------|------------------------|--|
| | 2021 Fiscal Plan | 2021 Projected Actual | Actual Over/(Under) Plan | % Variance | 2022 Fiscal Plan | |
| Financing Fees | | | | | | |
| Application Fees (All Programs) | \$1,004,000 | \$1,015,000 | \$11,000 | | \$2,400,000 | |
| Bond Closing Fees-Private | 450,000 | 42,000 | (408,000) | | 450,000 | |
| Bond Closing Fees-State | 300,000 | 300,000 | | | 300,000 | |
| Bond refunding Fees-Private | 125,000 | | (125,000) | | 125,000 | |
| Bond refunding Fees-State | 150,000 | | (150,000) | | 150,000 | |
| Commitment Fees Credit | 143,000 | 40,000 | (103,000) | | 65,000 | |
| Loan Closing Fees Credit | 118,000 | 240,000 | 122,000 | | 35,000 | |
| Guarantee Closing Fees | 30,000 | | (30,000) | | | |
| New Incentive Activity | 1,000,000 | | (1,000,000) | | 500,000 | |
| Commitment Fees ERGG | 1,000,000 | 387,500 | (612,500) | | 1,000,000 | |
| Closing Fees ERGG | 313,000 | 92,000 | (221,000) | | 225,000 | |
| Aspire Tax Credit Approval Fees | 150,000 | | (150,000) | | 1,210,000 | |
| Angel Tax Credit Approval Fees | 382,000 | 250,000 | (132,000) | | 500,000 | |
| Film Tax Credit Issuance Fees | 142,000 | | (142,000) | | 100,000 | |
| GROW NJ Issuance Fees | 821,000 | 1,400,000 | 579,000 | | 1,825,000 | |
| Windport Project | 30,000 | | (30,000) | | | |
| Modification Fees | 200,000 | 325,000 | 125,000 | | 275,000 | |
| NJ Emerge Tax Credit Approval Fees | 350,000 | 330,000 | (20,000) | | 1,365,000 | |
| NOL Approval Fees | | | | | 150,000 | |
| Offshore Wind Approval Fees | 400,000 | | (400,000) | | 300,000 | |
| Other | 50,000 | 122,500 | 72,500 | | 50,000 | |
| Total Financing Fees | 7,158,000 | 4,544,000 | (2,614,000) | -36.5% | 11,025,000 | 54.0% |
| Lease Revenue | | | | | | |
| NY Daily News | 50,000 | | (50,000) | | | |
| NJBC | 5,489,000 | 5,493,000 | 4,000 | | 6,195,000 | |
| NJBC Step-Out Labs | 903,000 | 1,020,000 | 117,000 | | 1,003,000 | |
| NJBC Incubator | 845,000 | 929,400 | 84,400 | | 850,000 | |
| Camden Amphitheater Office | 12,000 | 12,000 | | | 12,000 | |
| SPF-Philadelphia 76ers | 84,000 | 84,000 | | | 84,000 | |
| Total Lease Revenue | 7,383,000 | 7,538,400 | 155,400 | 2.1% | 8,144,000 | 10.3% |
| Agency Fees | | | | | | |
| Board of Public Utilities Clean Energy | 87,500 | 86,000 | (1,500) | | 85,000 | |
| CSIT - Clean Tech Seed Program | 62,500 | 62,500 | | | 170,000 | |
| Historic Trust Fund | 1,000 | | (1,000) | | 1,000 | |
| NJ Local Development Financing Fund | 450,000 | 450,000 | | | 450,000 | |
| Total Agency Fees | 601,000 | 598,500 | (2,500) | -0.4% | 706,000 | 17.5% |
| Program Services | | | | | | |
| BEIP Service Fees | 687,000 | 400,000 | (287,000) | | 413,000 | |
| BRRAG Service/Transfer Fees | 122,000 | | (122,000) | | 122,000 | |
| ERGG Service/Transfer Fees | 263,000 | 300,000 | 37,000 | | 290,000 | |
| Grow Service/Transfer Fees | 4,331,000 | 2,700,000 | (1,631,000) | | 3,000,000 | |
| HUB Annual Review/Tax Transfer Fees | 98,000 | 75,000 | (23,000) | | 75,000 | |
| Other Program Services Fees | | 75,000 | 75,000 | | 50,000 | |
| Total Program Services | 5,501,000 | 3,550,000 | (1,951,000) | -35.5% | 3,950,000 | -28.2% |
| Venture Fund Distributions/Warrants | | | | | | |
| Evergreen | 81,000 | | (81,000) | | | |
| Edison VI, VIII, IX & X | | 914,000 | 914,000 | | 3,317,000 | |
| ff Rose | | | | | 110,000 | |
| Milestone IV | | 55,000 | 55,000 | | 95,000 | |
| NewSpring Health | 320,000 | 765,000 | 445,000 | | 374,500 | |
| NJ Tech Council | | | | | 17,500 | |
| Osage | 470,000 | | (470,000) | | 16,000 | |
| Warrant Income | | 113,900 | 113,900 | | | |
| Total Distributions/Warrants | 871,000 | 1,847,900 | 976,900 | 112.2% | 3,930,000 | 351.2% |
| Real Estate Development and Mgt Fees | | | | | | |
| Development Fees | | | | | | |
| Windport Project | 2,200,000 | 750,000 | | | 3,700,000 | |
| Camden Parking Projects - Various | 45,000 | | (45,000) | | 45,000 | |
| Department of Health Building | 320,000 | 189,000 | (131,000) | | | |
| Division of Taxation Building | 340,000 | 203,300 | (136,700) | | | |
| Parcel F-1 ROI/RWJ | 306,000 | | (306,000) | | 310,000 | |
| Total Development Fees | 3,211,000 | 1,142,300 | (618,700) | -19.3% | 4,055,000 | 26.3% |
| Management Fees | | | | | | |
| Aquarium | 300,000 | 549,000 | 249,000 | | 540,000 | |
| Total Management Fees | 300,000 | 549,000 | 249,000 | 83.0% | 540,000 | 80.0% |
| Total RE Development & Mgt Fees | 3,511,000 | 1,691,300 | (369,700) | -10.5% | 4,595,000 | 30.9% |

**New Jersey Economic Development Authority
2022 Fiscal Plan
Other Sources and Cash Infusions**

| Business Segment | Product | Estimated Admin Reimbursement |
|----------------------------------|--------------------------------|----------------------------------|
| Venture | Evergreen | \$500,000 |
| | Black & Latino Seed Fund | 200,000 |
| | Innovation Fellows | 200,000 |
| Clean Energy | NJ Zip | 960,000 |
| | Green Fund | 200,000 |
| | COVID Business Grants | 500,000 |
| Business Lending | Main Street Fees | 2,000,000 |
| | Main Street Temp Reimbursement | <u>150,000</u> |
| Total Other Sources & Infusions: | | <u><u>\$4,710,000</u></u> |

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

**2022 Fiscal Plan
Administrative Expenses**

| | 2021 Approved Plan | 2021 Projected Actual | Actual Over/(Under) Plan | % Variance | 2022 Fiscal Plan | '22 Plan to '21 Plan % Variance |
|-------------------------------------|--------------------------|-----------------------------|--------------------------------|---------------|----------------------------|--|
| SALARY EXPENSE | <u>\$22,700,000</u> | <u>\$23,061,000</u> | <u>\$361,000</u> | <u>1.6%</u> | <u>\$26,680,000</u> | <u>17.5%</u> |
| FRINGE BENEFITS | | | | | | |
| Social Security | 1,690,000 | 1,506,600 | (183,400) | | 1,995,000 | |
| Pension Costs | 2,210,000 | 2,210,000 | | | 2,800,000 | |
| Non-health related Ins. | 310,000 | 296,000 | (14,000) | | 376,000 | |
| Health Insurance | 3,218,000 | 3,317,700 | 99,700 | | 3,710,000 | |
| Less: Employee Contribution | (966,000) | (1,140,000) | (174,000) | | (1,280,000) | |
| Post-employment benefits obligation | | | | | | |
| Prescription Ins. | 568,000 | 580,000 | 12,000 | | 670,000 | |
| Dental Care Ins. | 233,000 | 220,000 | (13,000) | | 245,000 | |
| Vision Care | 32,000 | 20,000 | (12,000) | | 36,000 | |
| TOTAL FRINGE BENEFITS | <u>7,295,000</u> | <u>7,010,300</u> | <u>(284,700)</u> | <u>-3.9%</u> | <u>8,552,000</u> | <u>17.2%</u> |
| TOTAL PERSONNEL AND FRINGE | <u>\$29,995,000</u> | <u>\$30,071,300</u> | <u>\$76,300</u> | <u>0.3%</u> | <u>\$35,232,000</u> | <u>17.5%</u> |
| Total Salaried Employees | <u>251</u> | <u>272</u> | <u>21</u> | | <u>295</u> | <u>17.5%</u> |

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
2022 Fiscal Plan
Administrative Expenses

| | 2021 Approved Plan | 2021 Projected Actual | Actual Over/(Under) Plan | % Variance | 2022 Fiscal Plan | '22 Plan to '21 Plan % Variance |
|--|--------------------------|-----------------------------|--------------------------------|---------------|------------------------|--|
| PERSONNEL RELATED | | | | | | |
| Part-time Employees | \$130,000 | \$165,000 | \$35,000 | | \$150,000 | |
| Temporary Agencies | 100,000 | 310,000 | 210,000 | | 500,000 | |
| Publications & Subscriptions | 10,000 | 8,500 | (1,500) | | 10,000 | |
| Automobile | 10,000 | 8,600 | (1,400) | | 11,000 | |
| Local Travel & Meetings | 77,000 | 5,000 | (72,000) | | 55,000 | |
| Conference | 45,000 | 5,000 | (40,000) | | 40,000 | |
| Professional Training/Development | 238,000 | 180,000 | (58,000) | | 295,000 | |
| TOTAL PERSONNEL RELATED | 610,000 | 682,100 | 72,100 | 11.8% | 1,061,000 | 73.9% |
| CONTRACT SERVICES | | | | | | |
| Financial Audit & Actuarial Services | 157,000 | 120,000 | (37,000) | | 137,000 | |
| COVID Testing | | | | | 200,000 | |
| HR Consultation | 20,000 | | (20,000) | | | |
| Strategic Initiatives | 80,000 | | (80,000) | | 345,000 | |
| GAU/OAL Assessments | 44,000 | 43,500 | (500) | | 44,000 | |
| TOTAL CONTRACT SERVICES | 301,000 | 163,500 | (137,500) | -45.7% | 726,000 | 141.2% |
| INFORMATION SYSTEMS | | | | | | |
| System Maintenance | 140,000 | 153,000 | 13,000 | | 162,000 | |
| System Software | 720,000 | 1,233,000 | 513,000 | | 1,143,000 | |
| System Hardware | 110,000 | 145,000 | 35,000 | | 410,000 | |
| CRMS | 50,000 | 13,500 | (36,500) | | 15,000 | |
| Online Subscriptions | 177,000 | 250,000 | 73,000 | | 93,000 | |
| Communications | 441,000 | 347,500 | (93,500) | | 481,000 | |
| External Services Providers | 83,000 | 65,000 | (18,000) | | 122,000 | |
| TOTAL INFORMATION SYSTEMS | 1,721,000 | 2,207,000 | 486,000 | 28.2% | 2,426,000 | 41.0% |
| OFFICE OPERATIONS | | | | | | |
| Utilities | 278,000 | 239,400 | (38,600) | | 297,000 | |
| Postage & Delivery | 21,000 | 14,500 | (6,500) | | 29,000 | |
| Rent | 379,000 | 346,700 | (32,300) | | 642,000 | |
| Insurance-liability & property | 328,000 | 310,000 | (18,000) | | 373,000 | |
| Equipment Maintenance | 18,000 | 6,500 | (11,500) | | 25,000 | |
| Furniture/Equipment lease/purchase | 57,000 | 28,000 | (29,000) | | 36,000 | |
| Stationary & Supplies | 45,000 | 26,400 | (18,600) | | 48,000 | |
| TOTAL OFFICE OPERATIONS | 1,126,000 | 971,500 | (154,500) | -13.7% | 1,450,000 | 28.8% |
| BUILDING MANAGEMENT | | | | | | |
| Facility Management | 134,000 | 133,300 | (700) | | 141,000 | |
| Buiding Security Guard | 148,000 | 96,000 | (52,000) | | 155,000 | |
| Janitorial | 200,000 | 159,600 | (40,400) | | 203,000 | |
| Taxes/PILOT | 66,000 | 65,100 | (900) | | 67,000 | |
| Grounds | 50,000 | 50,500 | 500 | | 60,000 | |
| Parking Lot | 101,000 | 105,000 | 4,000 | | 215,000 | |
| Mechanical Maintenance | 168,000 | 71,000 | (97,000) | | 170,000 | |
| TOTAL BUILDING MANAGEMENT | 867,000 | 680,500 | (186,500) | -21.5% | 1,011,000 | 16.6% |
| GENERAL | 63,000 | 52,800 | (10,200) | -16.2% | 77,000 | 22.2% |
| TOTAL GEN'L & ADMIN. EXPENSE | \$4,688,000 | \$4,757,400 | \$69,400 | 1.5% | \$6,751,000 | 44.0% |
| TOTAL ADMINISTRATIVE (Excl FM/OR) | \$34,683,000 | \$34,828,700 | \$145,700 | 0.4% | \$41,983,000 | 21.0% |

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

2022 FISCAL PLAN

Program Cost Detail

| | 2021 Fiscal Plan | 2021 Projected Actual | Actual Over/(Under) Plan | % Variance | 2022 Fiscal Plan | '22 Plan to '21 Plan % Variance |
|---|------------------------|-----------------------------|--------------------------------|---------------|------------------------|--|
| Asset Management | | | | | | |
| Maintenance and Repair | \$1,603,000 | \$1,608,000 | \$5,000 | | \$1,842,000 | |
| Property Management | 310,000 | 243,000 | (67,000) | | 315,000 | |
| Taxes and PILOT | 1,179,000 | 1,196,000 | 17,000 | | 1,217,000 | |
| Tenant Billing System | 9,000 | 8,100 | (900) | | 9,000 | |
| Utilities | 1,076,000 | 945,000 | (131,000) | | 1,020,000 | |
| Total Asset Management | 4,177,000 | 4,000,100 | (176,900) | -4.2% | 4,403,000 | 5.4% |
| Outreach | | | | | | |
| Marketing Contract | 120,000 | 120,000 | | | 200,000 | |
| Sponsorships | 200,000 | 225,000 | 25,000 | | 425,000 | |
| EDA Hosted Events | 100,000 | | (100,000) | | 20,000 | |
| Advertising/Marketing/Promotional | | 1,500 | 1,500 | | 140,000 | |
| Booth Design | | | | | 20,000 | |
| Website Redevelopment | 10,000 | 15,300 | 5,300 | | | |
| Total Outreach | 430,000 | 361,800 | (68,200) | -15.9% | 805,000 | 87.2% |
| Consultation/Legal | | | | | | |
| Deputy AG Contracted Fees | 925,000 | 1,100,000 | 175,000 | | 1,200,000 | |
| Other Litigation (External/Special Counsel) | 500,000 | 1,350,000 | 850,000 | | 675,000 | |
| BAC Site Mart Update | 25,000 | | (25,000) | | | |
| BBBR Challenge Grants | | | | | 100,000 | |
| Camden Waterfront Survey | 20,000 | | (20,000) | | 20,000 | |
| Choose NJ Sponsorship | | 150,000 | 150,000 | | | |
| DEP/CCI/Brownfield MOU | 670,000 | 780,000 | 110,000 | | 600,000 | |
| DEP/Licensed Site Remediation | 10,000 | | (10,000) | | 10,000 | |
| iDMS Programming | | 240,000 | 240,000 | | 360,000 | |
| Diversity DEI Initiatives | 300,000 | | (300,000) | | 100,000 | |
| Environmental Consultants | 35,000 | 16,000 | (19,000) | | 35,000 | |
| EDA Compliance Audits | | | | | 282,000 | |
| EDA Incentive Programs Audit | 100,000 | | (100,000) | | 150,000 | |
| Legal Review/Due Diligence (BRG) | 100,000 | | (100,000) | | 50,000 | |
| Memberships (Various) | | | | | 100,000 | |
| NJBC PILOT Space Png/Feas/Soft Costs | 112,500 | | (112,500) | | | |
| NJBC Condo (Engineering/Architect) | 50,000 | 19,000 | (31,000) | | | |
| Real Estate Advisory Services | 100,000 | 80,000 | (20,000) | | 100,000 | |
| NJIT Brownfields Extended MOU | 200,000 | | (200,000) | | | |
| NJTransit MOU | 100,000 | | (100,000) | | | |
| Other RE Consulting/Feasibility/Camden | 150,000 | | (150,000) | | | |
| Other Economic Growth Program Costs | 600,000 | | (600,000) | | 500,000 | |
| Total Consultation/Legal | 3,997,500 | 3,735,000 | (262,500) | -6.6% | 4,282,000 | 7.1% |
| Services | | | | | | |
| Appraisals of Collateral | 30,000 | | (30,000) | | 30,000 | |
| Credit Reporting Services | 4,000 | 4,500 | 500 | | 5,000 | |
| Realtor Commissions | 190,000 | 180,000 | (10,000) | | 190,000 | |
| Total Services | 224,000 | 184,500 | (39,500) | -17.6% | 225,000 | 0.4% |
| Insurance | | | | | | |
| Property & Liability Insurance | 253,000 | 240,000 | (13,000) | | 269,000 | |
| Total Insurance | 253,000 | 240,000 | (13,000) | -5.1% | 269,000 | 6.3% |
| Other | | | | | | |
| Debt Servicing | 26,500 | | (26,500) | | | |
| Filing Fees | 5,000 | 1,500 | (3,500) | | 3,000 | |
| Program Related Travel & Meetings | 50,000 | 10,000 | (40,000) | | 40,000 | |
| Office of International Trade | 25,000 | | (25,000) | | | |
| Searches-Titles, Liens, Property | 22,000 | 30,000 | 8,000 | | 30,000 | |
| Other | 20,000 | 25,000 | 5,000 | | 20,000 | |
| Total Other | 148,500 | 66,500 | (82,000) | -55.2% | 93,000 | -37.4% |
| Total Program Costs | \$9,230,000 | \$8,587,900 | (\$642,100) | -7.0% | \$10,077,000 | 9.2% |



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: November 15, 2021

SUBJECT: Offshore Wind Painting and Submerged Arc Welding Memorandum of Understanding (MOU) – New Jersey Economic Development Authority (NJEDA) and Gloucester County Institute of Technology

Request

The Members are requested to approve a Memorandum of Understanding (MOU) between NJEDA and Gloucester County Institute of Technology (GCIT) that will enable NJEDA to provide up to \$75,000 in funding to GCIT to support its expansion of its painting and welding programs. These expanded programs will prepare students and workers for jobs in heavy steel offshore wind component manufacturing, including for the approximately 500 jobs¹ proposed by EEW American Offshore Structures' (EEW) offshore wind monopile manufacturing facility, located in close proximity to GCIT. EEW is a leading manufacturer of offshore wind monopiles, one of the largest components in offshore wind turbines. GCIT, a four-year vocational-technical public high school, is collaborating with EEW to expand and tailor their painting and welding programs to train students for the specific job skills required by EEW and other large scale turbine component manufacturers, and NJEDA would help fund equipment, materials, and instructor time through this MOU. This MOU utilizes funding from the Offshore Wind Initiatives MOU signed between NJEDA and the NJ Board of Public Utilities dated July 14, 2021.

The full text of the MOU is included as Exhibit A of this memorandum.

The proposed MOU has a term of eighteen (18) months. Members are also requested to provide delegated authority to the CEO to extend the MOU by up to twelve (12) months if needed.

Background

Governor Murphy's economic development plan, "The State of Innovation: Building a Stronger and Fairer New Jersey Economy" identifies offshore wind as one of the State's strategic sectors for accelerating growth in New Jersey's economy. In addition, the plan asserts a commitment to investing in people in order to empower New Jersey students and workers to take advantage of high-growth, high-wage jobs. Governor Murphy's talent development plan, "JobsNJ: Developing Talent to Grow Business in the Garden State" emphasizes the need to bolster industry recognized credential programs that support career pathways. The growth of specialized welder and painter occupations for the offshore wind industry, particularly for EEW's forthcoming monopile fabrication

¹ The number of jobs being proposed are EEW's estimate and have not yet been verified nor approved by NJEDA.

facility, in New Jersey represent an opportunity to realize these priorities. NJEDA is currently supporting the launch of the Wind Institute to coordinate and support offshore wind related workforce training.

In December 2020, EEW Offshore Structures announced a \$250 million investment in a state-of-the-art manufacturing facility to build steel components, known as monopiles, for offshore wind turbines that will serve the entire United States offshore wind industry. The facility, which will be located at the Paulsboro Marine Terminal in Gloucester County, is the largest industrial offshore wind investment in the United States to date. Construction on the facility broke ground earlier this year and hiring of specialized welders and painters will begin by the end of next year. Production is expected to begin by 2023. These occupations will be high quality and permanent job opportunities and will require specialized training to meet skillset needs for offshore monopile welding (known as submerged arc welding²) and painting; these skillsets would also be required for offshore wind tower manufacturing, an emerging industry in the U.S. offshore wind sector. GCIT's partnership with EEW will be critical to ensuring local students and workers are trained and prepared for these opportunities. These skills will also prepare students for jobs in other manufacturing facilities as well as New Jersey's offshore wind supply chain as it grows.

EEW and GCIT have already made commitments to support the expansion of these programs, including securing donated submerged arc welding equipment from welding product manufacturer Lincoln Electric. Through this MOU between NJEDA and GCIT, NJEDA will provide additional financial support to help GCIT secure specialized painting equipment and related materials, market and promote these new programs, as well as fund instructor time for additional evening/weekend classes that will train adults.

MOU Description

The proposed MOU will provide up to \$75,000 in funding to support expansion of GCIT's welding and painting programs in order to prepare students for specialized positions in monopile fabrication and other large-scale manufacturing. These funding supports may cover the following:

- Equipment and materials for both welding and painting programs,
- Marketing and promotional materials, and
- Instructional and professional development time for welding and painting instructors.

Recommendation

It is the recommendation of Authority staff that the Members (1) approve the MOU between NJEDA and GCIT, attached as Exhibit A, to provide up to \$75,000 in funding to support expansion of GCIT's welding and painting programs in order to prepare students for specialized positions in monopile fabrication facility other large-scale manufacturing, funding for which comes from the MOU between NJEDA and BPU for Offshore Wind Initiatives dated July 14, 2021 and (2) provide delegated authority to the CEO to extend the MOU by up to twelve (12) months if needed.



Tim Sullivan, CEO

Prepared by: Julia Kortrey and Jen Becker

² Note: Submerged arc welding, also known as "sub-arc welding," refers to welding under sand, not underwater. This welding occurs onshore in fabrication facilities using specialized machines.

Exhibit A

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("MOU"), made as of this day of _____, 2021 (the "Effective Date"), is between the NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY ("EDA") and the Gloucester County Institute of Technology ("GCIT"), (collectively the "Parties").

WHEREAS, the EDA, established pursuant to N.J.S.A. 34:1B-1 et seq., is an independent State authority, in but not of Treasury, that serves as the State's principal agency for driving economic growth and is committed to making New Jersey a national model for inclusive and sustainable economic development by focusing on key strategies to help build strong and dynamic communities, create good jobs for New Jersey residents, and provide pathways to a stronger and fairer economy; and

WHEREAS, the EDA has launched the Office of Economic Transformation to focus on the growth-oriented sectors identified in the Governor's Strategic Plan for Economic Development; and

WHEREAS, offshore wind was identified as one of those growth-oriented sectors; and

WHEREAS, the EDA has determined that specialized training will be required to meet skillset needs for welding (known as submerged arc welding) and painting of monopiles and other heavy steel components to support the growth of the offshore wind sector; and

WHEREAS, it is in the best interest of the Parties to enter into this MOU regarding the provision of EDA support of GCIT's welding and painting programs for EEW monopile manufacturing.

NOW, THEREFORE, the Parties, in order to effectively and efficiently carry out their respective statutory mandates, agree to the following:

1. GCIT will undertake the following activities:
 - a. Provide to EDA a budget estimating unfunded costs GCIT anticipates it will incur for its expansion of welding and painting programs prior to undertaking any activities and requests for EDA to support funding gaps.
 - b. Utilize funding to expand its welding and painting programs to support the specialized training and skills required by the offshore wind industry.
 - c. Provide plan to EDA to determine and achieve positive enrollment and employment outcomes as a result of this funding support before expending EDA funding support.
 - d. Track and report use of funding from EDA and ensure resources only go toward related welding and painting equipment, materials, and instructional time.

2. The EDA will undertake the following activities:
 - a. Provide technical assistance and staff time as needed to support program expansion rollouts.
 - b. Provide up to \$75,000 in funding to support related equipment, material, and instructor time expenses.
 - c. Monitor program progress, expansion, and funding support to ensure EDA resources are expended appropriately.
3. The MOU shall not take effect unless executed by the authorized representatives of EDA and GCIT. This MOU becomes effective immediately upon execution and shall remain in effect for eighteen (18) months. This MOU may subsequently be extended for one (1) year upon mutual written consent of the Parties.
4. The Parties are entering into this MOU for the sole purpose of evidencing the mutual understanding and intention of the Parties with respect to offshore wind welding and painting program expansions. It may be amended, modified, and supplemented at any time by mutual consent and in writing signed by the undersigned or their designees. This MOU may also be terminated by EDA staff or GCIT upon 60 days prior written notice to the other. There are no third-party beneficiaries of this MOU.
5. The Parties acknowledge that they are both public entities of the State of New Jersey. Therefore, the Parties agree that each entity shall be liable for its own conduct and any claims against it without indemnification from the other.
6. All notices, demands or communications to any party to this MOU shall be send to the addresses set forth below or as may be otherwise modified in writing:

EDA: 36 West State
 Street POBox 990
 Trenton, NJ 08625

GCIT:

IN WITNESS HEREOF, EDA and GCIT have executed this MOU on the dates below:

For GCIT:

Name:

Signature: _____

Title: _____

Date: _____

For EDA:

Name: Tim Sullivan

Signature: _____

Title: Chief Executive Officer

Date: _____



MEMORANDUM

To: Members of the Authority

From: Tim Sullivan

Date: December 8, 2021

Subject: F and A Enterprise Employee Leasing Inc.
Request for Suspension

Summary

Because its owner has been indicted for allegedly making material misrepresentations, tampering with public records, and conspiring to defraud governmental entities, the Members of the Board are asked to suspend F and A Enterprise Employee Leasing Inc. and its owner, Faiza Ibrahim, from contracting with the Authority, pending the completion of the Attorney General's investigation and legal proceedings, in accordance with Executive Order 34 (Byrne 1976), and other applicable laws. If the Members approve, a request for suspension will be sent to the Attorney General, and the suspension will be effective only upon concurrence by the Attorney General.

Purpose:

F and A Enterprise Employee Leasing Inc. applied to the Authority's Micro Business Loan Program. Businesses applying for this and other Authority programs are subject to the Authority's Disqualification/Debarment Regulations, N.J.A.C. 19:30-2.1, *et seq.*, and Executive Order 34 (Byrne 1976) ("EO34"). These laws are intended to protect the NJEDA from fraud, waste and abuse by allowing it to avoid doing business with non-responsible businesses and to ensure that applicants for financial assistance demonstrate and maintain the highest standards of responsibility and moral integrity. Applicants for most Authority programs must complete a legal questionnaire answering certain background questions pertaining to litigation and misconduct that can lead to debarment, disqualification, or suspension under the regulations and EO34. For the Micro Business Loan Program and other programs involving smaller loans and grants, the NJEDA's Board has authorized use of a simplified legal questionnaire.

EO34 permits the Authority to suspend, upon approval of the Attorney General, a person based upon a reasonable suspicion of various causes including "offense(s) indicating a lack of business integrity or honesty" and "[v]iolations of any laws governing the conduct of occupations or professions or regulated industries." For reasons detailed below, staff recommends that the Board suspend F and A Enterprise Employee Leasing Inc. and its owner and exclude them from contracting with and obtaining financial assistance from the NJEDA for a temporary period, pending the Attorney General's completion of its investigation and legal proceedings.

Background:

F and A Enterprise Employee Leasing Inc. (“F and A”) is a S Corporation based in Morris County that is owned by Faiza Ibrahim. F and A applied for the Authority’s Micro Business Loan program on August 12, 2020, requesting a loan of \$50,000. In its application, F and A described its business as dedicated to “bookkeeping & recruit and hire [sic] school bus drivers for school bus companies.” As part of that application, F and A completed the Authority’s simplified legal questionnaire, which asked whether the applicant was presently indicted for or otherwise criminally or civilly charged with violating the law. Applicant answered “no” to all of the questions on the simplified legal questionnaire. In accordance with usual procedure, program staff conducted searches to confirm information provided in the application. Those searches revealed information that appeared inconsistent with the applicant’s responses to the legal questionnaire, causing the program staff to request a full legal review by the Legal Affairs department.

The Legal Affairs department performed additional searches, including a search of available criminal records. That search indicated that on October 7, 2020, applicant’s owner, Faiza Ibrahim, and a related company, F&A Transportation, Inc., were served a criminal complaint by the Newark Municipal Court, alleging violations of N.J.S.A. 2C:5-2A(1) (Conspiracy); 2C:21-34B (False Representation for a Government Contract); 2C:20-4 (Theft by Deception); 2C:21-9C (Misconduct by Corporate Officials); 2C:2-6 (Liability for conduct of Another Complicity); and 2C:28-7A (Tampering with Public Records or Information). These charges were transferred to the county prosecutor on January 4, 2021. On August 31, 2021, the Grand Jury issued an indictment against F&A Transportation, Inc., and its owners, Faiza Ibrahim and her husband.

Per the Attorney General’s office press release, these charges stem from an investigation by the Office of Public Integrity and Accountability and the New Jersey State Police Official Corruption Bureau. The alleged criminal conduct relates to contracts that F&A Transportation, Inc. secured from 2015 through 2020 with public school districts in Essex, Passaic, Morris and Union counties. The contracts had an aggregate total value of approximately \$3.5 million. The press release noted that in February 2019, an employee of F&A allegedly used heroin in F&A’s parking lot in East Orange before boarding a school bus to transport 12 special-needs children in Newark. While driving with the children on board, the employee allegedly overdosed and crashed the school bus into the wall of a building. Police who arrived on the scene used Narcan to revive the employee.

Per the press release, the defendants allegedly knowingly hired drivers who did not hold valid commercial driver’s licenses or required license endorsements, as well as drivers who had criminal histories or were using illegal drugs. They also allegedly falsified vehicle inspection forms to indicate their buses consistently passed required pre- and post-trip company inspections. Those forms must be maintained for review by the NJ Motor Vehicle Commission (MVC) and are relied upon by school districts as proof of bus safety.

Further, New Jersey laws and regulations require that all school bus drivers possess a valid commercial driver’s license with two additional endorsements to carry students as passengers. School bus drivers and bus aides are also required to undergo drug testing and criminal background checks, and drivers or aides with a criminal history or with known substance abuse issues are prohibited from driving school buses. According to the Attorney General’s Office, the defendants allegedly falsely represented the qualifications of their drivers and aides, including licensing and background check information, as well as the condition of their vehicles. They thereby misrepresented that the company and its drivers and aides were qualified under state, federal, and local law, as well as the terms of their contracts, to provide school busing services to students.

It should be noted that, F and A also applied to the Phase 3 Small Business Emergency Assistance Grant Program on November 2, 2020. Under the guidelines of this program, applicants with 0-5 FTEs are eligible for up to \$10,000.00. Applicant answered “no” to all of the questions on the simplified questionnaire, specifically question number six, “Is the applicant presently indicted for or otherwise criminally or civilly charged by a government business with the commission of a violation of law?” At the time the application for the Phase 3 Grant was submitted, Ms. Ibrahim had already been criminally charged by way of complaint by the Newark Municipal Court for the alleged violations. As a result of those misrepresentations, F and A was approved for a grant in the amount of \$10,000.00 that it would not have received had it disclosed the pending case. We note that the grant agreement was signed on December 8, 2020 by Ms. Ibrahim’s husband, Ahmed Mahgoub, who, per applicant’s owner, is a manager of F and A Enterprise Employee Leasing, Inc.

Grounds for Possible Suspension:

Pursuant to Paragraph 8(b) of the Executive Order, “...a decision to suspend shall be made at the discretion of the executive head of the department and of the Attorney General and shall be rendered in the best interest of the State.” In determining whether a suspension is proper, the decision must be based “upon evidence adequate to create a reasonable suspicion that cause exists.” EO34 ¶ 8(c). According to Paragraph 8(e) of the Executive Order, reasonable suspicion may be established by grand jury indictment.

Disqualification of Affiliates

Pursuant to Paragraph 1 of EO34, “suspension...shall be invoked by the state to exclude or render ineligible certain persons from participation in contracts and subcontracts with the State, or in projects or contracts performed with the assistance of the subject to the approval of the State, on the basis of a lack of responsibility.” Under Paragraph 2(e) “person” is defined as “any natural person, company, firm, association, corporation, or other entity.” The suspension may include “known affiliates of a person, provided that each decision to include an affiliate is made on a case by case basis after giving due regard to all relevant facts and circumstances. The offense, failure or inadequacy of performance of an individual may be imputed to a person with whom he is affiliated, where such conduct was accomplished within in the course of his official duty or was effected by him with the knowledge or approval of such person.” EO34 ¶6(d). EO34 defines “affiliates” to mean “persons having an overt or covert relationship such that any one of them directly or indirectly controls or has power to control another.” EO34 ¶2(g).

On October 7, 2020, applicant’s owner, Faiza Ibrahim, was served a complaint by the Newark Municipal Court as a result of the alleged violation of N.J.S.A. 2C:5-2A(1) (Conspiracy); 2C:21-34B (False Representation for a Government Contract); 2C:20-4 (Theft by Deception); 2C:21-9C (Misconduct by Corporate Officials); 2C:2-6 (Liability for conduct of Another Complicity); and 2C:28-7A (Tampering with Public Records or Information).

On August 31, 2021, applicant's owner was indicted by a Grand Jury for the following:

Count One: Conspiracy (2C:5-2), Second Degree

Defendants, between in or about January 2016 and in or about June 2020, in the City of Newark, in the County of Essex, in the City of Paterson, in the County of Passaic, in the City of East Hanover, in the County of Morris, elsewhere, and within the jurisdiction of this court, with the purpose of promoting or facilitating the commission of the crimes of False Representation for a Government Contract, Theft by Deception, Misconduct by a Corporate Official, Tampering With Public Records, and Falsifying or Tampering with Records, did agree that A) one or more of them knowingly would engage in conduct which would constitute the aforesaid crime(s) or B) One of more of them knowingly would air int eh planning, solicitation or commission of said crime.

Count Two: False Representation for Government Contract (2C:21-34B), Second Degree

Defendants, between in or about January 2016 and in or about June 2020, knowingly made one or more false material representations in connection with the negotiation, award or performance of one or more contracts with public school districts, the amount of each bid being \$25,000.00 or more, specifically by falsifying and misrepresenting the qualifications of the company and its drivers and aides to transport students or by falsifying documents pertaining to school bus inspections during the negotiation, award, or performance of contracts with school districts for school bus routes, in violation of the above statute and NJSA 2C:2-6 (Liability for Conduct of Another).

Count Three: Theft by Deception (2C:20-4a), Second Degree

Defendants, between in or about January 2016 and in or about June 2020, purposely obtained funds in excess of \$75,000 from one or more Public School Districts within the State of New Jersey by deception, that is by creating or reenforcing a false impression, ... specifically by falsifying and providing false documents in support of the contracts, and by misrepresenting the qualification of the company and its drivers and aides to transport students, in violation of the above statute and NJSA 2C:2-6 (Liability for Conduct of Another).

Count Four: Misconduct by Corporate Official (2C:21-9(c)), Second Degree

Defendants, between in or about January 2016 and in or about June 2020, purposely or knowingly used, controlled, or operated a corporation for the furtherance or promotion of any criminal object, specifically False Representation for a Government Contract, Theft by Deception, Tampering with Public Records or Information, or Falsifying or Tampering With Records, in violation of the above statute and NJSA 2C:2-6 (Liability for Conduct of Another).

Count Five: Tampering with Public Records or Information (2C:28-7(a)), Third Degree

Defendants, between in or about January 2016 and in or about June 2020, with the purpose to defraud or injure anyone, knowingly made a false entry in, or false alteration of, or knowingly made, presented, offered for filing or use, any record, document or thing belonging to, or received or kept by, the government for information or record, or required by law to be kept by others for information of the government, specifically: by knowingly making false entry in or false alteration of, or making or presenting or offering for filing falsified school bus inspection reports or by misrepresenting the qualifications of the company and its drivers and aides to transport students, in violation of the above statute and NJSA 2C:2-6 (Liability for Conduct of Another).

Count Six: Tampering with Public Records or Information (2C:28-7(a)), Fourth Degree

Defendants, between in or about January 2016 and in or about June 2020, with purpose to deceive or injure another or to conceal a wrongdoing, did falsify a writing or record or did utter a writing or record knowing that it contains a false statement or information, specifically by falsifying school bus inspection reports or uttering false school bus inspection reports knowing they contained false statements or information or by misrepresenting the qualifications of the company and its drivers and aides to transport students, in violation of the above statute and NJSA 2C:2-6 (Liability for Conduct of Another).

Pursuant to EO34, the Grand Jury indictment constitutes reasonable suspicion that criminal violations occurred, evidencing a lack of responsibility and business integrity. As per the indictment, the applicant's owner conspired to misrepresent material information and tampered with documentation to gain contracts with and large payments from various New Jersey public schools. If proven, those crimes would justify disqualifying the applicant and its owner from doing business with the NJEDA. The NJEDA is legally entitled to demand that applicants for financial assistance demonstrate and maintain the highest standards of responsibility and moral integrity. The NJEDA is also entitled to decline to provide financial assistance and otherwise do business with non-responsible businesses.

The suspension will last until the investigation and related legal proceedings are completed. Once the suspension expires, staff will determine whether disqualification is appropriate based on the outcome of the criminal investigation and proceedings. If there are no convictions and if the application is still pending and if funds remain available in the Micro Business Loan program, staff may then complete the legal review and eligibility review of F and A's Micro Business Loan application.

Recommendation:

In light of the foregoing, staff is recommending that the Board approve the suspension of F and A Enterprise Employee Leasing Inc. and its owner, Faiza Ibrahim, from contracting with the Authority, pending the completion of the Attorney General's investigation and related legal proceedings, in accordance with Executive Order 34 (Byrne 1976), and other applicable laws. A request for suspension will be sent to the Attorney General, and the suspension will be effective only upon concurrence by the Attorney General.

A handwritten signature in blue ink, appearing to read 'T. Sullivan', is positioned above a horizontal line.

Tim Sullivan, CEO

Prepared by: Gisselle Vega



TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: December 8, 2021

SUBJECT: New Jersey Wind Port – Request for Moffatt & Nichol (M&N) Contract Increase

REQUEST

The Members of the Board are asked to approve up to a \$2.495 million increase to the Authority's contract with Moffatt & Nichol (M&N) for design and engineering services in relation to the New Jersey Wind Port (NJWP). This comprises:

- \$495,000 in scoped and priced change orders (COs) including:
 - o Parcel A design modifications required to accommodate PSEG Nuclear (the Authority's landlord) and recent offshore wind industry design inputs;
 - o Engineering support for the New Jersey Department of Transportation (NJDOT), which will oversee hydraulic dredging on the Authority's behalf; and
 - o Engineering services relating to telecommunications, sewer and security infrastructure.
- \$2 million as an initial budget to progress:
 - o Phase 1 design completion;¹ and
 - o Phase 2 concept development and early stage design².

Staff are also seeking delegated authority to approve or modify COs within the total approval amount, as project needs require. All COs will conform with M&N's existing contract.

Staff intend to return to the Board in 2022 for additional design funding. Staff are currently working with M&N, as well as the Authority's technical advisors, WSP USA, to cost the balance of Phase 1 design costs. The initial budget that is the subject of this request is sized to enable Staff to proceed with the Phase 1 design while a holistic budget is being developed

¹ Phase 1 comprises Parcels A, G, C, D and E, as well as associated road and other utility infrastructure

² Phase 2, which is currently at the concept stage, comprises Parcels B1 and B2 and associated infrastructure

for the balance of Phase 1's design and construction phase administration costs – thereby avoiding approval-related delays to design completion and in-turn construction.

Funds will also be used to progress concept development and early stage design for Phase 2, recognizing the recent strong market response to the Notice to sublease and need to preserve the overall development schedule for Phase 2. M&N's contract, which was assigned to Authority in October 2020, is scoped to include both project phases.

Approval of this request will increase total funding for M&N's contract to \$11.21 million since its assignment to the Authority. The total contract value is \$12.95 million, which includes \$1.75 million incurred by PSEG Nuclear under its contract with M&N prior to the contract's assignment to the Authority. The \$1.75 million was reimbursed to PSEG Nuclear per the Letter of Intent (LOI) between PSEG Nuclear and the Authority, with the reimbursement covered by the Board's \$7 million approval of LOI-related costs. Staff will draw on state funding to cover all costs incurred by the Authority under M&N's contract.

DETAIL

Change orders (COs) which are scoped and priced by M&N

Table 1 summarizes the cost breakdown, with further detail on each CO included below.

| Task/Change order | Not-to-exceed cost |
|--|---------------------------|
| Design changes relating to nuclear safety | \$59,040 |
| Surcharge embankment review | \$73,440 |
| Desilting line relocation design | \$9,612 |
| Modifications to water distribution system | \$15,459 |
| Site communications infrastructure | \$154,980 |
| Sewer Service Area regulation change | \$22,240 |
| Heavy haul road modifications | \$58,088 |
| Parcel A electrical capacity design modification | \$13,044 |
| NJDOT engineering support | \$70,560 |
| Ronin Security engineering support | \$16,944 |
| | |
| Total | \$493,407 |

PSEG-initiated studies and modifications

During completion of detailed design for Parcel A (the marshalling port) several studies and modifications were requested by PSEG Nuclear. PSEG's review and approval rights over the Port's design are governed by the Ground Lease. Services and modifications included:

- A review of the Parcel A design and development of a Design Change Package (DCP) by Sargent and Lundy (S&L), which has been retained by PSEG as its nuclear engineer. A DCP is the process that PSEG Nuclear undertakes to document engineering reviews and

approvals – a thorough review and clear documentation being necessary to comply with the terms of its nuclear operating license. As the Authority’s designer-of-record, M&N was required to coordinate with S&L on their review and subsequent design revisions.

- LS Power (the owner of a transmission line and associated easements adjacent to the Port property) required that M&N review its surcharge embankment design to assess potential impacts and mitigation measures on its adjacent over and underground power lines.
- M&N are required to input to the proposed relocation of a desilting line that presently runs through Parcel A, and which will need to be moved prior to the surcharging of the site.

Incorporating OSW industry feedback

The Authority continues to engage with offshore wind developers and manufacturers on its Phase 1 design, including through the issuance of technical requests for information (RFIs). This ongoing engagement has enabled the Authority to refine designs for connecting inland parcels to the wharf, for the placement of security fencing and customs checkpoints, and siting of utility infrastructure. These inputs have required additional coordination and design modifications from M&N.

Engineering support for NJDOT

The New Jersey Department of Transportation (NJDOT) is partnering with the Authority in the delivery of the NJWP project. Specifically, NJDOT is funding and is responsible for delivering hydraulic dredging components of the project. Interfacing between NJDOT (and their contractors) and the Authority and its contractors is being managed through ongoing and detailed coordination. As part of this coordination effort, NJDOT reviewed M&N’s design and provided inputs that will need to be captured in final drawings and specifications. Outputs will be used by NJDOT as part of a future bid process for a dredging contractor. M&N will also be required to closely coordinate with NJDOT and its engineering team on an ongoing basis.

Ronin Security Solutions

The Authority has retained Ronin Security Solutions to develop a Facility Security Assessment (FSA), which is required under the Maritime Transportation Security Act. As the Authority’s designer-of-record, M&N will be tasked with supporting Ronin’s efforts in preparing the FSA.

Utilities infrastructure design

Communications infrastructure for the Port was originally planned to be extended from PSEG’s existing facilities, which was reflected in the original basis of design. PSEG have since advised the Authority that existing capacity will be insufficient to support the Port’s needs, meaning that a new fiber service will be required. M&N will be tasked with resolving a telecommunications infrastructure solution, including coordinating with PSEG Nuclear on siting.

Additionally, M&N will be tasked with supporting the preparation of a Sewer Service Area Regulation Change application for lodgment with the New Jersey Department of Environmental Protection (NJDEP). The application’s development is being led by PSEG Nuclear, as the

landowner, alongside its permitting advisor, AKRF, with M&N providing engineering support.

Initial budget for Phase 1 design, and Phase 2 concept development and early stage design

In addition to the priced scopes of work outlined above, the Authority is requesting approval for an initial budget of up to \$2 million to progress Phase 1 design completion and Phase 2 concept development. Each of these aspects is detailed further below.

Phase 1 design completion

In September this year Parcel A, which comprises the initial marshalling port, reached 100 percent design completion. As required by the Ground Lease, PSEG Nuclear are currently reviewing the design to ensure conformity with nuclear requirements.³ Other Phase 1 parcels, which includes parcels G, C, D and E, as well as connecting roads and enabling utility infrastructure, remain at the feasibility stage, with preliminary design to commence in 2022.

Staff are currently working with M&N, as well as the Authority's technical advisors, WSP, to cost the balance of Phase 1 design costs. For manufacturing parcels, the design budget is heavily contingent on the manufacturing facility sizing and type, which remains to be determined. An initial budget of \$2 million will enable Staff to proceed with those aspects of Phase 1 design which can commence in coming months, while a holistic budget is being developed for the balance of Phase 1's design and construction phase administration costs – thereby avoiding approval-related delays to design completion and in-turn construction.

While the precise scope and cost is still being developed, the following engineering tasks are anticipated to commence in the next six months:

- Provision of general engineering support for permitting;
- Provision of general engineering support during the Authority's negotiations with wind developers and manufactures, further to the recently issued Notice to sublease;
- Parcel C preliminary and detailed design;
- Parcel D preliminary and detailed design;
- Parcel E preliminary and detailed design;
- Utility infrastructure design and associated permitting support;
- Coordination with PSEG Nuclear on design review and adjustments, if applicable;
- Design of security infrastructure further to the Facility Security Assessment (FSA); and
- Provision of engineering services in relation to beneficial reuse.

The completion of certain of these tasks is necessary in order to arrive a holistic design budget.

Phase 2 concept development and early stage design

³ Per the Lease, PSEG Nuclear review a parcel or facility design at the 30, 60, 90 and 100 percent completion stage.

Funds will also be used to progress concept development for Phase 2, recognizing the recent strong market response to the Notice to sublease property at the Port. M&N's contract, which was assigned to Authority in October 2020, is scoped to include both phases of the project.

While the precise scope and cost is still being developed, the following engineering tasks are anticipated to commence in the next six months:

- Provision of general engineering support for Phase 2 permitting;
- Provision of general engineering support during the Authority's negotiations with wind developers and manufacturers in relation to Parcel B, further to the recently issued Notice to sublease;
- Parcel B feasibility and preliminary design; and
- Utility infrastructure design and associated permitting support.

RECCOMENDATION

The Members of the Board are asked to approve up to a \$2.495 million increase to the Authority's contract with Moffatt & Nichol (M&N) for design and engineering services in relation to the New Jersey Wind Port (NJWP). This comprises:

- \$495,000 in scoped and priced change orders (COs)
- \$2 million as an initial budget to progress:
 - o Phase 1 design completion; and
 - o Phase 2 concept development and early stage design.

Staff are also seeking delegated authority to approve or modify COs within the total approval amount, as project needs require. All COs will conform with M&N's existing contract.



Tim Sullivan, CEO

Prepared by: Jonathan Kennedy, Dennis Feeney, Aaron Roller



MEMORANDUM

To: Members of the Authority

From: Tim Sullivan
Chief Executive Officer

Date: December 8, 2021

RE: Hamilton Square Urban Renewal LLC and
Soldier On Veterans Village VII, LLC
Economic Redevelopment and Growth Grant Program ("ERG")
Product #00289001

Request

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

The Members are asked to approve the application of Hamilton Square Urban Renewal LLC (the "Applicant") and Soldier On Veterans Village VI, LLC (the "Co-Applicant") for a Project located at 20-21 Mill Street, Paterson City (the "Project"), for the issuance of tax credits pursuant to the RES ERG program of the Authority as set forth in the New Jersey Economic Opportunity Act of 2013, P.L. 2013, c. 161 ("Act").

The total costs of the Project are estimated to be \$19,168,895 and of this amount \$16,814,414 are the estimated eligible costs under the RES ERG program. The recommendation is to award up to 40% of actual eligible costs, not to exceed \$6,317,779. The Applicants are eligible for a base award of 20% and a bonus of an additional 20% (for a total of 40%) since the Applicants will reserve 20% of the units for moderate income housing and the project is in a Garden State Growth Zone. This award amount recommended for approval, representing 37.57% of eligible project

costs, was requested by the Applicants as it meets their project needs. This project is seeking availability from the \$200 million in new ERG tax credits of which \$125 million is allocated to residential projects as part of the New Jersey Economic Recovery Act of 2020 for applications received prior to December 31, 2021. As the first project utilizing this allocation, there will be \$118,682,221 of remaining tax credits after this approval is considered. The Project qualifies as a residential project as greater than 51% of the square footage is allocated to residential uses.

Project Description

Hamilton Square is a 68-unit mill-style two building apartment community located in Paterson, New Jersey in the Great Falls Historic District. The Project consists of one three-story, historic, brick building (20 Mill Street) initially built in 1814 (and renovated in 1997) and one four-story brick building (21 Mill Street) built in 1997. The Project has a mix of seven one-bedroom units, fifty-four two-bedroom units, and seven three-bedroom units with forty-two parking spaces (subject to change) for the tenants. Seven units within the property will be converted to fully compliant ADA units as part of the planned rehabilitation. Presently, fifty units (71%) are occupied. The ground floor of 21 Mill Street has eight commercial spaces with a commercial parking lot that are not part of the Project. The land and buildings will be broken into 2 condominium units with the EDA Applicant solely purchasing the residential portion and the other unit comprising the commercial component to remain with the current owner. The aggregate residential square footage of the Project is 66,524 square feet which includes 14,873 square feet of common area (lobbies, community room, mechanical areas and common bathroom). The proposed net rents ranges are \$852-\$1,057 for the one-bedrooms, \$1,010-\$1,256 for the two-bedrooms and \$1,153-\$1,438 for the three bedrooms.

The budgeted renovations have a total expense of \$5.9 million, equating to \$86,574 per unit. The proposed renovations are not exclusive to the vacant units. Every unit will have completely rehabbed kitchens with new range/refrigerators, and cabinetry; bathrooms with new toilets, faucets, showerheads, and medicine cabinets; apartments with updated aluminum windows, new doors, and high-grade vinyl floor or hardwood floors. Additionally, the Project will have common area and exterior renovations that will include: the conversion of the 1,499-sf vacant commercial space at 20 Mill Street into a community room, shrinking the largest three bedroom unit to a 1,250-sf apartment, with the remaining space being converted into a small fitness center, upgrades/repairs to the elevators, replace the trash compactor, installation of a new security system with cameras, drywall repairs, common area floor repairs, and exterior repairs to the sidewalks, fences, and parking lot.

The site is in a Low Income Housing Tax Credit Qualified Census Tract, Opportunity Zone, Smart Growth area, and Ready to Grow Area and has been prioritized for redevelopment by the municipality of Paterson. It is under a mile and less than a 15-minute walk from the Paterson New Jersey Transit train station, adjacent to the Paterson Great Falls National Historic Park, within walking distance of schools, shopping, restaurants, places of worship and recreational opportunities.

For low income tax credit purposes, Hamilton Square Urban Renewal LLC has elected the 40% at 60% of area median income (“AMI”) set aside meaning 40% of the residential units will be restricted and occupied by households whose income is 60% or less than the AMI. None of the tenants will be displaced during the rehabilitation process, which will take approximately 12 months with anticipated commencement slated for March 2022. According to the in-place rehabilitation plan, the tenants will have an opportunity to meet with the construction management team that will be on-site during the rehabilitation period. During this process, each of the unit’s basic services and utilities will be restored by the end of each workday (usually by 5pm).

Hospitality suites will be available to residents during the day while their units are being renovated. The total temporary relocation budget for the proposed rehabilitation is \$250,000 (\$3,676 per unit). The budget will include the cost of furnishing the hospitality suite(s), providing meals to the residents whose units are impacted by the construction, packing, cleaning, and miscellaneous costs.

Soldier On Veterans Village VII LLC, through its affiliate, Soldier On Inc. will meet all the requirements to act as the non-profit, co-applicant and co-recipient for the ERG tax credits under the Board approved July 9, 2015 policy by demonstrating an active participating and contributing role in the Project. Soldier On Inc. was founded in 1994 in Massachusetts committed to ending veteran homelessness. Soldier On Inc. provides a continuum of programs to ensure that homeless veterans and their families have access to immediate and long-term housing with an array of support services delivered to them where they live. Soldier On Inc. has robust experience in New Jersey and nationwide and is the largest provider of supportive services for veteran families in the US.

The Project is explicitly supported by the City of Paterson in a letter dated September 22, 2021 from the Mayor of Paterson to the EDA. Construction is expected to begin in March 2022 in conjunction with the closing of financing. The anticipated completion of the Project is May of 2023 which also coincides with expectation that 100% of the units will be occupied. This date is consistent with the December 31, 2024 required date of construction completion and issuance of temporary certificate of occupancy. The Applicant intends to comply with the green building requirements and has submitted a letter from the architects MG New York Architects PLLC affirming Energy Conservation Measures as recommended in the ASHRAE Level II report conducted by Sparhawk Group have been included in the scope of work for the renovation of the Project.

Although applicants for the RES ERG program are not required to maintain certain employment levels, it is estimated that this Project will create approximately 100 temporary construction jobs.

Project Ownership/Applicant

The applicant for the ERG and applicant for all the project financing is Hamilton Square Urban Renewal LLC, such entity also to be known as the “Sponsor” and/or “Borrower.” The pre-syndication ownership structure illustrates that Hamilton Square MM LLC will be the managing member of Hamilton Square Urban Renewal LLC with 99.99% ownership interest. Gilbert

Winn will be the member of Hamilton Square Urban Renewal LLC with a 0.01% interest. Post syndication ownership, the equity investor in Hamilton Square Urban Renewal LLC will be an affiliate of Boston Financial Investment Management, LP (“BFIM”) which is also known as the tax credit investor or low-income housing tax credit (“LIHTC”) syndicator with a 99.99% ownership interest upon completion of conditions contained in the commitment to make capital contributions based on the LIHTC’s provided to the Project. The remaining 0.01% ownership post syndication will be owned by Hamilton Square MM LLC which is owned by ten members, a combination of Winn family members and trusts). A corporation affiliated with BFIM will be a special member in the Sponsor with certain restricted management rights and a small interest in sale proceeds. The managing member and “Developer” of the project will be Hamilton Square Developer LLC which is 85% owned by an affiliate of Winn Development Company, LP, (“Winn”) located in Boston, MA and 15% by Hamilton Square Partners LLC. Winn is one of the country’s foremost developers of adaptive reuse properties and affordable housing. Over its nearly 50 years of history, Winn has acquired and developed real estate assets in excess of \$2.5 billion. Winn has developed six properties in New Jersey over the past five years and manages over 2,000 housing units in New Jersey. Prior projects developed by Winn that have utilized NJEDA programs include Argus Ellison Development in Paterson, Riverside Arms in Newark and Brunswick Estates in Jersey City. This project represents the seventh financed by NJHMFA in which Winn is the owner, developer or property manager. There are 14 other residential projects in New Jersey which Winn manages. Winn has also completed projects in New York, Massachusetts, Rhode Island, Connecticut, Pennsylvania and Washington, DC. Hamilton Square Partners is owned equally by Owen Tonkins and Daryll Tyson who are businessmen from Paterson providing local assistance).

Winn has entered into a purchase and sale agreement with the seller, LSC Partners, L.P. dated March 30, 2021 for \$7 million. There is no common ownership between these two entities. The Applicant has entered into an assignment of purchase and sale agreement with the assignor, Winn dated October 27, 2021.

Co-Applicant

Soldier On Veterans Village VII, LLC (“SOVV”) is a special purpose entity and subsidiary of Soldier On Inc. (“SO”) which was established in 1994 as a non-profit organization committed to ending veteran homelessness. SOVV will be the recipient of the RES ERG tax credits. SOVV, through its parent organization SO, has successfully demonstrated to the EDA as per the July 9, 2015 board memo, that they have met all requirements to act as the non-profit by demonstrating the following:

Purposes of the Co-Applicant- Organizing documents of the Co-Applicant will be requested as well as a narrative regarding the activities of the Co-Applicant generally, in the State and in the municipality to verify that the Co-Applicant is in a position to provide the material participation to the project discussed below.

1. SO has provided organizing documents as well as a narrative regarding the activities of the non-profit generally and in the State to better understand the purposes, mission and

how the non-profit is necessary and related to the project. All organizing documents are in order and current.

2. The narrative provided focused on how the non-profit will provide direct services specifically to the veteran population including technical computer assistance and other services.

Material Participation. A long-term material participation agreement must be shared illustrating how the non-profit is taking an active role in the partnership.

1. An MOU dated October 4, 2021 illustrates that SO is taking an active role in the partnership by providing services including: referrals, outreach, case management, peer recovery support to individuals with chronic addictions, mental health, medical needs, assistance with finances, education, employment and a specialized holistic case management and wellness program for veterans.

Level of Contribution- The parties must demonstrate evidence that the Co-Applicant will contribute capital, real property or services related to the project that directly affect and serve the anticipated resident population.

1. The Applicant has demonstrated that the non-profit will contribute capital, real property, or valuable and related services to the project and/or the anticipated resident population.
2. SOVV will use the proceeds of the sale of the credits to loan back to the project for the term of the incentive or make a capital contribution to the project.

All residents of the Project will have access to a range of social services. These services are designed to empower the residents, will include educational programs on a broad variety of topics, computer and technical support labs and health screenings. Social services to be provided by SO to the project will occur in the community room at 20 Mill Street building and will be in place through the term of the RES ERG tax credit incentive to ensure the tenants are being provided with adequate resources that will result in personal growth.

Based on the above information, the EDA staff believes, SOVV and its parent SO, will play a significant role to the Project in addition to being a valuable resource to the tenants of this prospective community.

Project Uses

| <i>Uses</i> | <i>Total Project Cost</i> | <i>Eligible Amount</i> |
|-----------------------------|---------------------------|------------------------|
| Land & Building Acquisition | \$ 7,000,000 | \$ 7,000,000 |
| Improvements/Construction | \$ 5,886,877 | \$ 5,886,877 |
| Professional Services | \$ 606,000 | \$ 606,000 |
| Financing and Other Costs | \$ 3,244,439 | \$ 2,049,964 |
| Contingency | \$ 751,573 | \$ 751,573 |
| Development Fee | \$ 1,680,006 | \$ 0 |
| TOTAL USES | \$ 19,168,895 | \$ 16,814,414 |

ERG eligible project costs exclude ineligible costs aggregating \$2.34 million, which includes the development fee of \$1.68 million, escrows and reserves aggregating \$611,297 and NJEDA ERG fees of \$63,178. The applicants are eligible for tax credits of a maximum of 40% of the actual eligible costs of the project. The total eligible costs of \$16,814,414 at 40% equates to \$6,725,766, but the applicants seek an ERG award of \$6,317,779 representing 37.57% of eligible costs.

Project Sources

| <i>Sources of Financing</i> | <i>Amount</i> |
|--------------------------------|----------------------|
| FHA 221(d)(4) | \$ 5,181,008 |
| ERG loan | \$ 4,503,355 |
| HOME Grant Funds Paterson | \$ 1,500,000 |
| Applicant Equity: | |
| Partnership Equity (via LIHTC) | \$ 7,017,352 |
| NOI During Construction | \$ 381,167 |
| Deferred Developer Fee | \$ 586,013 |
| Total | \$ 19,168,895 |

The above sources and uses were calculated as of 11/12/21 based on the most readily available information. It is likely that there will be minor adjustments to the figures above primarily due to changes in interest rates and NJHMFA requirements over the next 90 days in preparation for the financial closing. Note that above sources and uses pertain to permanent financing and exclude \$1,214,235 in costs associated with interest on the RES ERG bridge loan over the full ten-year term as this is not deemed a RES ERG eligible project cost, however, are often included in the NJHMFA project cost calculations.

The applicant has received a declaration of intent from NJHMFA at the September 23, 2021 board meeting for issuance of up to \$10,200,000 in conduit bonds for the construction financing of this Project. It is anticipated that upon conversion from construction to permanent financing the remaining permanent mortgage would consist of a HUD, FHA insured 221(d)(4) multi-unit housing product for \$5,181,008 at 2.90% fixed interest rate repayable over 12 months interest only followed by a 40-year term and amortization. Conversion to permanent paydown is achieved once other permanent sources have been closed (namely LIHTC and ERG bridge loan) which is

Hamilton Square Urban Renewal LLC and Soldier On Veterans Village VII, LLC

December 8, 2021

anticipated to occur in Q1 of 2023. This project is expected to be presented for final approval at the December 16, 2021 NJHMFA board meeting to be followed by an approval at the subsequent board meeting for final bond documents. Orix Real Estate Capital LLC d/b/a Lument Capital has provided a commitment dated August 4, 2021 to serve as underwriter for the construction and permanent financing. Lument Securities has also provided a letter of intent to underwrite the \$10.2 million in NJHMFA issued tax exempt bonds in a public offering with an expected interest rate of 0.29%, interest only for up to 24 months.

The applicant has represented that they will receive a commitment from the City of Paterson Home Funds in the amount of \$1,500,000 which have no required repayment. Should these funds not be available then the applicant will be responsible to find other sources and/or provide equity to fill this gap. The Project is currently exploring historic tax credits for the 20 Mill Street building which is estimated to bring in a maximum of \$500,000 in funding.

Fallbrook Tax Credit LLC has provided a term sheet dated October 22, 2021 to act as placement agent for the \$6,317,779 in ERG tax credits to be purchased by investors for approximately \$0.905 on the dollar aggregating \$5,717,590. These funds, less the \$1,214,235 in interest, will be injected into the project via a commitment letter dated October 23, 2021 for a bridge loan of \$3,931,596 from New Jersey Community Capital at 5.75% for a ten-year term (the monetization of the first year RES ERG tax credits of \$571,759 is anticipated to be available in the summer of 2022 when interim financing is converted to permanent and is not part of the calculation of the sizing of the NJCC loan).

The applicant is applying to NJHMFA for 4% LIHTC's amounting to approximately \$7,485,170 and anticipates the sale of the tax credits at \$0.9375 on the dollar. In exchange for these tax credits, the LIHTC investor, Boston Financial Management, L.P. its successors and/or assigns is expected to generate equity of \$7,017,352 to the Project per a commitment letter dated October 28, 2021.

Development Fee

Per the August 12, 2014 board memo and subsequent program rule amendments approved by the Members of the Authority an alternative method of analysis based on the deferred developer is permitted to replace the internal rate of return analysis to satisfy the statutory established threshold of "the project is not likely to advance without the award of the ERG" in projects jointly applying for NJHMFA and NJEDA assistance. Developers of affordable residential developments like this Project often base undertaking a project based primarily on the development fee (leaving the equity contribution and equity return to the low-income housing tax credit investor). This Project is classified as a residential project with LIHTCs, thereby making the development fee the most appropriate methodology to assess the economic metrics of the Project.

The amount of the developer fee allowed for eligible rehabilitation or new construction costs will be limited to 15% of the total development costs excluding land, pre-operational expenses and escrows and reserves pertaining to permanent takeout financing. The total development fee includes all hard and soft costs, in addition to applicable financing fees. Developer fee at project construction completion or stabilization shall not exceed 8% (out of the 15%) with the balance

being deferred and paid through cash flow generated by the Project. This is consistent with NJHMFA's approach.

The applicant has demonstrated to the NJEDA that the Project will not generate sufficient cash flow to return the entire developer fee within five years of project stabilization. The maximum developer fee of 15% for this Project is not anticipated to be collected until year seven. Winn will be the entity earning the developer fee in the Project.

RES ERG projects are required to have a minimum of 20% equity in their capital structure based on total project costs. The equity sources of capital in this project are deferred developer fee of \$586,013, net operating income during construction of \$381,167 and LIHTC equity syndicated by Boston Financial in the amount of \$7,017,352 which collectively equate to 42% of total project costs.

Other Statutory Criteria

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

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

EDA staff received WCredit LLC's financial statements (entity which provides a guarantee of loans for Winn, including this Project's financing and is related to Winn via common principals) as of December 31, 2020 as prepared by Pricewaterhousecoopers LLP. Staff reviewed these statements and determined that the Applicant has the financial capacity to complete this project. A more detailed review of staff's analysis of the Applicant's financial capacity to complete the project can be found in the Confidential Memorandum of Financial Analysis. Winn Development LP has acquired, and developed holdings valued in excess of \$2.5 billion. Winn has improved or converted more than five million square feet of properties into prime space for a wide range of commercial and residential uses. Winn has secured permanent financing from NJHMFA to fund approximately five low income housing projects and maintain a portfolio of 14 affordable housing developments in NJ. The Project appears to be economically feasible based on the track record of the applicant and their development team as well as the numerous funding sources made available to this Project.

The Project has demonstrated a funding gap and this RES ERG redevelopment is likely not to happen without the EDA's assistance. The applicants were able to exhibit a shortfall in the financing structure without being awarded the RES ERG tax credits.

The Authority is in receipt of a market study which was commissioned by the Developer dated October 14, 2021 prepared by Integra Realty Resources ("IRR"), a third-party consultant who issued their determination of current and future market conditions. The purpose of the market study is to analyze the overall market and conclude rental rates for the proposed development as well as perform an analysis of the Developer's expense projections. The study demonstrates an existing and anticipated future demand for the project and supports the financial assumptions included in the applicant's projected financial model. The study defined and analyzed the market area and estimated potential multifamily demand and supply within the market and the factors that

could impact rental values. Research was performed on the immediate market area and demographic and housing information judged to be reliable and used in the industry. IRR concluded the unit mix, square footages and rental ranges which were consistent with the applicant's pro-forma.

The applicant received a letter from Paterson's Director of Economic Development dated August 3, 2021 demonstrating a need for the Project and supporting the development.

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

The project site is in Paterson, an urban aid municipality. The project site's surrounding area has a median family income of less than \$28,000 per year. The site's surrounding population is over 95% minority with owner-occupied homes comprising 3% of the housing within the area. The average age of the homes in this area is over 50 years old and nearly 10% of the available housing remains vacant. Paterson City's unemployment rate is currently 9.1%, more than double the national average and only 10% of the City's population has a college degree. Paterson City's violent crime rate is roughly double the national average and triple the average crime rate of New Jersey as a whole.

The project has a combination of economic development, housing and public parking through historic preservation and re-use, which helps revitalize the City of Paterson as well as create new tax ratables. The Project is located in central Paterson, convenient to shopping, services and employment. The project generates a positive impact on the community by reducing the blight associated with underutilized properties; provides high-quality, affordable housing options for residents and public parking.

Recommendation

Authority staff has reviewed the application for Hamilton Square Urban Renewal LLC and Soldier On Veterans Village VII, LLC and found that it is consistent with eligibility requirements of the Act. It is recommended that the Members approve and authorize the Authority to issue an approval letter to the Applicants.

Issuance of the RES ERG tax credits is contingent upon the Applicant meeting the conditions, including the following, within one year:

1. Financing commitments for all funding sources for the Project consistent with the information provided by the Applicants to the Authority for the RES ERG.
2. Evidence of site control and site plan approval for the Project;
3. Copies of all required State and federal government permits for the Project and copies of all local planning and zoning board approvals that are required for the Project.
4. Executed agreement between the applicant and the co-applicant satisfactory to the Authority that demonstrates the co-applicant's active role in the Project. The term of this

agreement (including renewal options) must not end earlier than the ERG eligibility period.

Tax Credits shall be issued upon satisfaction of conditions including the following:

1. Completion of construction and issuance of a temporary Certificate of Occupancy no later than December 31, 2024; and
2. Submission of a detailed list of all eligible costs, which costs shall be certified by a CPA and satisfactory to the NJEDA;

It is recommended that the Members authorize the CEO or staff person authorized by the CEO of the EDA to execute any assignment agreements necessary to effectuate this transaction.

Total Estimated Eligible Project Costs: \$ 16,814,414.

Eligible Actual Credits and Recommended Award: The recommendation is to award 37.57% of the total actual eligible project costs allocable to residential housing uses, not to exceed \$6,317,779.



Tim Sullivan, CEO

Prepared by: Michael A. Conte



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: December 8, 2021

SUBJECT: Proposed Rule Amendments: Emerge Program: (N.J.A.C. 19:31-22)

Request:

The Members are requested to approve the attached proposed amendments to the Emerge Program rules to implement certain policy and statutory revisions pursuant to the recently enacted P.L. 2021, c. 160, as well as to implement a revised fee structure.

These actions authorize Staff to (a) submit the proposed rule amendments for publication in the New Jersey Register and (b) submit the proposed program rules as final adopted rules for publication in the New Jersey Register if no formal comments are received; subject to final review and approval by the Office of the Attorney General and the Office of Administrative Law.

Background:

The New Jersey Economic Recovery Act (ERA) of 2020 (P.L.2020, c.156) was signed into law January 7, 2021. The ERA presents a strong recovery and reform package that will address the ongoing economic impacts of the COVID-19 pandemic and position New Jersey to build a stronger and fairer economy that invests in innovation, in our communities, and in our small businesses the right way, with the protections and oversight taxpayers deserve. Tax incentives and other investment tools are critical to economic development, and when used correctly they can drive transformative change that uplifts communities and creates new opportunities for everyone.

These actions include 15+ economic development programs, including:

- Tax credits to incentivize job creation and capital investment;
- Investment tools to support and strengthen New Jersey's innovation economy;
- Tax credits to strengthen New Jersey's communities including revitalization of brownfields and preservation of historic properties;
- Financial resources for small businesses, including those impacted by the COVID-19 pandemic;
- Support for new supermarkets and healthy food retailers in food desert communities;
- Additional tax credits for film and digital media.

The Emerge Program is one of the 15+ programs created or updated under the ERA. The Emerge Program is an incentive program designed to support job creation and large-scale job retention, with a focus on targeted industries. The Members approved special adopted new rules and concurrent proposed new rules for the Emerge Program on May 12, 2022.

Following the Members approval, P.L. 2021, c. 160 was enacted in July 2021 to amend various provisions of the New Jersey Economic Recovery Act of 2020 and other economic development programs, including the Emerge Program. As a result of the statutory amendments, staff is requesting the Members' approval of proposed amendments to the Emerge rules to be consistent with P.L. 2021, c. 160.

P.L. 2021, c. 160 authorizes the modifications and revisions that are detailed in Appendix A, below is a brief summary of the significant changes to the Emerge Program based on the amended Law:

- expanded the definition of Capital Investment to include landlord contribution incurred on behalf of a business
- revised the definition of "enhanced area" and "incentive area" to expand the incentive eligible locations
- modified the definition of "qualified childcare facility" to include registered family childcare homes, and providing that the definition includes facilities that maintain a licensed capacity for children aged 13 or younger who attend for less than 24 hours per day;
- reduced the amount of bonus credits awarded for excess capital investment and higher-paid employees, as well as eliminated tax credit bonus for projects located in qualified incentive tracts.
- expanded tax credit bonus to include projects that generate geo-thermal, wind, or any other renewable or distributive energy in addition to solar energy projects
- the amended law provides \$2,000 dollars, per job, per year bonus for **each new or retained full-time job**, when one-third or more of the members of an eligible business's governing body, self-identify as members of an underrepresented community
- "Statewide workforce" is revised to delete the provision that an eligible position shall be "at, or associated with, the qualified business facility (QBF) and now states the eligible position has to be in the State. This allows more flexibility for remote NJ employees

- the amendments revised and lowered the retained full-time jobs requirements when a business is also creating new jobs:

Minimum retained jobs only

- In a Qualified Incentive Tract, Government-Restricted Municipality or Enhanced Area: 500 retained full-time jobs
- All other locations: 1,000 or more

Projects with both new jobs & retained jobs (new change)

- In GRM – New jobs & 150 retained full-time jobs
- In Qualified Incentive Tract or Enhanced – new jobs & 250 retained full-time jobs
- In all Other eligible incentive locations – new jobs & 500 or more retained full-time

As part of the proposed rule amendments being presented for the Members’ consideration, Staff also recommends revising the fee structure to create a separate schedule for projects which are designated as “Mega Projects.” Based on Staff’s experience through the early Emerge Program approvals, these projects require additional staff time in terms of assessing whether a project meets the Mega Project definition. This includes reviewing if the project provides an opportunity for New Jersey to leverage leadership in a high-priority targeted industry, as demonstrated by factors including, but not limited to: being undertaken by a business that is making an industry leading investment in a new technology or high-growth sub-industry level or catalyzing a new sub-industry or industry-cluster within the State. This extra level of due diligence is required at the initial application review as well as each year of compliance checks during the commitment period. These fee changes specifically include:

| Project Fee Inputs | Small projects (1-99 Jobs) | Medium projects (100-249 Jobs) | Large projects (250+ Jobs) | Mega projects (Proposed) |
|--|-------------------------------|-----------------------------------|-------------------------------|-----------------------------|
| Applications Fees | \$5,000 | \$10,000 | \$15,000 | \$25,000 |
| Approval Fee | \$10,000 | \$75,000 | \$165,000 | \$250,000 |
| Tax Credit Certificate Issuance Fee | \$10,000 | \$100,000 | \$200,000 | \$300,000 |
| Annual Servicing Fee | \$5,000 | \$25,000 | \$60,000 | \$90,000 |
| Tax Credit Transfer Certificate (initial request) | \$5,000 | \$10,000 | \$15,000 | \$20,000 |

| | | | | |
|--|---------|----------|----------|----------|
| Tax Credit Transfer Certificate (additional request) | \$2,500 | \$5,000 | \$7,500 | \$10,000 |
| First Six-month Extension | \$5,000 | \$10,000 | \$15,000 | \$20,000 |
| Subsequent Extension | \$7,500 | \$15,000 | \$25,000 | \$30,000 |

Administrative Change, Additions, or Modification to the Tax Credit

| Modification | Small projects (1-99 Jobs) | Medium projects (100-249 Jobs) | Large projects (250+ Jobs) | Mega projects (Proposed) |
|------------------------|-------------------------------|-----------------------------------|-------------------------------|-----------------------------|
| Minor | \$2,500 | \$5,000 | \$7,500 | \$10,000 |
| Major (Board Approval) | \$7,500 | \$15,000 | \$25,000 | \$35,000 |

Existing Incentive Agreement Termination

| Modification | Small projects (1-99 Jobs) | Medium projects (100-249 Jobs) | Large projects (250+ Jobs) | Mega projects (Proposed) |
|------------------------|-------------------------------|-----------------------------------|-------------------------------|-----------------------------|
| Minor | \$2,500 | \$5,000 | \$7,500 | \$10,000 |
| Major (Board Approval) | \$7,500 | \$15,000 | \$25,000 | \$35,000 |

Compliance with Executive Order 63

In accordance with the Executive Order 63 directive to ensure outreach efforts are made to the public and affected stakeholders for agency rulemaking, the Authority posted the rule proposal to its Economic Recovery Act transparency website (www.njeda.com/economicrecoveryact) to allow the public to submit written feedback directly through the NJEDA's website or through a newly established email account.

In addition, the Authority issued a media advisory alerting the public that the Emerge rule amendments were available for review and of the opportunity to provide informal input.

Chief Compliance Officer Certification of Draft Rule Proposal

Pursuant to Section 101(a) of the ERA, the Chief Executive Officer is required to appoint a Chief Compliance Officer (CCO) to, among other things, “review and certify that the provisions of program rules or regulations provide the authority with adequate procedures to pursue the recapture of the value of an economic development incentive in the case of substantial noncompliance, fraud, or abuse by the economic development incentive recipient, and that program rules and regulations are sufficient to ensure against economic development incentive fraud, waste, and abuse”.

Bruce Ciallella has been designated the CCO. In that capacity, Mr. Ciallella has reviewed the proposed rule amendments for the Program and is prepared to sign the certification, subject to the Board taking action to approve the same for submission to the New Jersey Office of Administrative Law for publication in an upcoming issue of the New Jersey Register.

Recommendation

The members are requested to approve the attached proposed amendments to the Emerge Program rules to (1) implement updates based on statutory provisions pursuant to P.L. 2021, c. 160, as well as, revisions to the fee structure. The approval will also authorize Staff to (a) submit the proposed rule amendments for publication in the New Jersey Register and (b) submit the proposed program rules as final adopted rules for publication in the New Jersey Register if no formal comments are received; subject to final review and approval by the Office of the Attorney General and the Office of Administrative Law.



Tim Sullivan, CEO

Prepared by:
Mathew Abraham

Attachments: Appendix A – Proposed Rule Amendments – Emerge Program

DRAFT

OTHER AGENCIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Proposed Amendments: N.J.A.C. 19:31-22.1 through 22.11, and 22.14 through 16

Authority Assistance Programs

Emerge Program Rules

Authorized By: New Jersey Economic Development Authority, Tim Sullivan, Chief Executive Officer.

Authority: P.L. 2021, c. 160.

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

Proposal Number: PRN 2022-__.

Submit written comments by _____, 2022, to:

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

The agency proposal follows:

Summary

The New Jersey Economic Development Authority (“NJEDA” or “Authority”) is proposing amendments to the rules implementing the Emerge program pursuant to recently enacted statutory revisions in P.L. 2021, c. 160 (approved July 2, 2021).

In accordance with the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, the NJEDA specially adopted and concurrently proposed the Emerge program rules on May 20, 2021, and adopted the concurrently proposed rules on December __, 2021, as simultaneously noticed along with these proposed amendments.

Under the New Jersey Economic Recovery Act of 2020, the Emerge Program Act, sections 68 through 81 of P.L. 2020, c. 156, was established to encourage economic development in the State’s priority sectors by providing per-job tax credits for up to seven years. To be

eligible for the program, a project must meet various eligibility criteria at application and at project certification, including:

- Be located in a qualified incentive area;
- Meet minimum capital investment requirements, except for small businesses;
- Yield a net positive benefit to the State of at least 400 percent of the requested tax credit (projects in certain more highly distressed areas of the State are subject to a lower net positive benefit threshold);
- Demonstrate that the award of the tax credit is a “material factor” in the decision to create or retain at least the minimum number of full-time jobs in New Jersey;
- Ensure that at least 80 percent of incented employees’ work time is spent in New Jersey;
- Ensure that the qualified business facility can accommodate at least 50 percent of incented new jobs, and to receive tax credits for retained jobs, the qualified business facility must accommodate all the retained full-time jobs at the time of application; and
- Commit to stay at the qualified business facility for 1.5 times the eligibility period.

The following provides a summary of the proposed amendments:

N.J.A.C. 19:31-22.1 Applicability and scope

The proposed amendment revises the section to include a citation for P.L. 2021, c. 160, which amends the Emerge Program Act.

N.J.A.C. 19:31-22.2 Definitions

The proposed amendments add new definitions for “technology startup company” and “substantial environmental remediation;” delete the definition of “authorized agent of the owner;” and redefine certain terms used in this subchapter, as follows:

“Business” is revised to 1. delete the provision that a business shall include an affiliate of the business if that business applies for a credit based upon any capital investment made by full-time employees of an affiliate, 2. delete “at, or associated with, the qualified business facility” as pertains to certain full-time employees in a cooperative or part of a cooperative, and 3. delete and replace “incentive” with “commitment” agreement;

“Capital investment” is revised to add that capital investment also means expenses incurred on behalf of the business or affiliate by its landlord, which may be demonstrated through an executed letter of intent or lease;

“Employment and Investment Corridor” is revised to 1. delete the existing date of until June 30, 2013 pertaining to a designated growth center in an endorsed plan under the New Jersey State Development and Redevelopment Plan, and 2. correct a reference to the State Development and Redevelopment Plan, and provide that at the time of application, the Employment and Investment Corridor contain any combination of office, laboratory, or industrial space, with the existing availability for occupancy requirement;

“Enhanced area” is revised to clarify that the area means a municipality that contains an urban transit hub as defined at section 2 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208);

“Full-time employee” is revised to 1. clarify that a person who is a resident of another state, and would be eligible pursuant to subparagraphs 1i, ii, or iii, but whose income is not subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., shall qualify due to a reciprocity agreement with the other state, 2. delete the requirement for an employee hired by way of a labor union hiring hall that the employee be employed 35 hours a week at a place “at, or associated with, the qualified business facility,” instead providing that the 35 hours must be worked “in the State,” 3. delete the provision excepting full-time employees of the Statewide workforce from the requirement to be provided employee health benefits, and 4. delete the requirement that a full-time employee shall be paid no less than \$15.00 per hour or 120 percent of the minimum wage as set forth in statute;

“Incentive area” is revised to 1. delete reference to a transit hub municipality which is replaced with enhanced area, 2. maintain eligibility for areas designated under the State Planning Act as Planning Area 2 (Suburban) or Planning Area 3 (Fringe Planning Area) or a Designated Center, but delete the requirement that those areas must be located within a one-half mile radius of the mid-point, with bicycle and pedestrian connectivity, of a major transportation center, such as a New Jersey Transit Corporation or Port Authority Transit Corporation station, and 3. correct a reference to the State Development and Redevelopment Plan;

“New full-time job” is revised to delete the provision that an eligible position created by a business shall be at, or associated with, a qualified business facility;

“Project agreement” or “incentive agreement” is revised to delete “or incentive agreement;”

“Project phase agreement or “incentive phase agreement” is revised to delete “or incentive phase agreement;”

“Quality child care facility” is revised to 1. correct a reference to the Department of Children and Families, 2. provide that a qualified center may also be a registered family child care home with the Department of Human Services, and 3. delete “total” and “of at least 60” as pertains to licensed capacity, and 4. delete the age requirement of six which is replaced with 13 and add “who attend for less than 24 hours a day;”

“Retained full-time job” is revised to delete “or of being eliminated” as pertains to an eligible position that currently exists in New Jersey, is filled by a full-time employee and which is at risk of being lost to another state or country due to potential relocation; and

“Statewide workforce” is revised to delete the provision that an eligible position shall be “at, or associated with, the qualified business facility.”

N.J.A.C. 19:31-22.3 Eligibility criteria

The proposed amendments make changes in the following code provisions:

N.J.A.C. 19:31-22.3(b) delete and replaces “a business’s authorized agent of the owner” with “the chief executive officer of the business or an equivalent officer;”

N.J.A.C. 19:31-22.3(b)2 delete “at, or associated with, the qualified business facility” which is replaced with “in the State;”

N.J.A.C. 19:31-22.3(b)5i delete “transit hub municipality” with is replaced with “an enhanced area” as pertains to the location a qualified business facility regarding the required net positive benefit to the State;

N.J.A.C. 19:31-22.3(b)5v delete “incentive” which is replaced with “commitment” agreement;

N.J.A.C. 19:31-22.3(b)5iv delete and replace “after” with “beyond” regarding the election of extended commitment period by the business for which the economic benefits shall be creditable by the Authority, and deletes that provision that if the business makes this election, the net positive economic benefits calculated shall be additionally discounted by the Authority to reflect the uncertainty of the business’s location after the commitment period expires;

N.J.A.C. 19:31-22.3(b)8i(2), which pertains to instances in which the payment of prevailing wage shall not apply, is amended to be clear that the exception applies where the landlord is a party to the construction contract, building services contract, or both;

N.J.A.C. 19:31-22.3(b)8i(3)ii corrects statutory references;

N.J.A.C. 19:31-22.3(c) addresses both required capital investment for some types of projects, and also building size requirements for other types of projects. The sentence related to qualification based on both retained full-time jobs and the size of the project being at least equal to the space occupied at the time of application is being eliminated.

N.J.A.C. 19:31-22.3(d)1 delete “at, or associated with, the qualified business facility” which is replaced with “in the State;”

N.J.A.C. 19:31-22.3(d)4 adds that for a business eligible for tax credits for new full-time jobs under (d)2 or 3, the business shall also be eligible for retained full-time jobs in addition to the new full-time jobs if the business will retain 150 retained full-time jobs when locating in a government-restricted municipality, 250 retained full-time jobs when locating in a qualified incentive tract or enhanced area municipality, or 500 retained full-time jobs when locating anywhere else in the State;

Recodified N.J.A.C. 19:31-22.3(d)5 clarifies that a business which is not eligible under (d)2, 3, or 4 but is locating in an “enhanced area,” an existing qualified incentive tract, or a government-restricted municipality, shall be eligible for the greater of 500 “retained” rather than the existing “new” full-time jobs or the retained full-time jobs at the time of application;

Recodified N.J.A.C. 19:31-22.3(d)6 revises the citation for (d)4 to (d)5 and deletes and replaces “new” with “retained” as pertains to full-time jobs or the business’s retained full-time jobs at time of application;

N.J.A.C. 19:31-22.3(e) inserts “and adhere to” regarding the requirements listed in (e)1 and 2;

N.J.A.C. 19:31-22.3(e)1 deletes “or” which is replaced with “and” pertaining to the requirement for a plan that demonstrates that the qualified business facility is capable of accommodating more than half of the business’s new and retained full-time employees. An additional change would delete the subsection (c) requirement that a project that is eligible based upon retained full-time jobs has to meet a requirement of accommodating all of the retained full-time employees at the facility.;

N.J.A.C. 19:31-22.3(e)2 deletes and replaces “authorized agent of the owner” which is replaced with “chief executive officer” of the business “or an equivalent officer;” and deletes and replaces the term “or” with “and” as pertains to a certification that certain withholdings of new and retained full-time jobs are, and will be, subject to the New Jersey Gross Income Tax Act; and

N.J.A.C. 19:31-22.3(f) deletes “owner” and “authorized agent of the owner” which is replaced with “chief executive officer” and “equivalent officer” of the business regarding the certification of certain factual representations.

N.J.A.C. 19:31-22.4 Restrictions

N.J.A.C. 19:31-22.4(a) deletes and replaces “an incentive” with “a commitment” agreement.

N.J.A.C. 19:31-22.5 Application submission requirements

At N.J.A.C. 19:31-22.5(a)1x, which pertains to a written certification of substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury, 1. delete and replace “owner” and “authorized agent of the owner” with “chief executive officer” and “an equivalent officer;” and 2. add that contractors or subcontractors that will perform work at the qualified business facility are registered as required by “The Public Works Contractor Registration Act,” P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.), have not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury;

N.J.A.C. 19:31-22.5(a)2iv(1) deletes and replaces “owner” and “authorized agent of the owner” with “chief executive officer” and “an equivalent officer” as pertains to the net positive economic benefit certification required therein;

N.J.A.C. 19:31-22.5(a)2ix deletes and replaces “current” with “proposed” as pertains to in-State locations relating to certain documents to be provided;

N.J.A.C. 19:31-22.5(a)3i deletes the requirement for a written certification by the owner of the eligible business, or an authorized agent of the owner that the eligible positions that are the subject of the application will be at, or associated with, the qualified business facility;

N.J.A.C. 19:31-22.5(a)3ii deletes and replaces “at, or associated with, the qualified business facility” with “in the State;”

N.J.A.C. 19:31-22.5(a)4i deletes and replaces “at, or associated with, the qualified business facility” with “in the State;” and

N.J.A.C. 19:31-22.5(d) deletes “owner” and “authorized agent of the owner” which is replaced with “chief executive officer” and “equivalent officer” regarding the certification of certain information provided as part of an amended application or additional or supplemental factual representations prior to approval.

N.J.A.C. 19:31-22.6 Fees

Proposed new N.J.A.C. 19:31-22.6(a)4 and proposed new N.J.A.C. 19:31-22.6(c)4 through (i)4 establish new fees for mega projects that are defined as certain projects of special economic importance, resulting in creation of 500 or more new full-time jobs, capital investment of at least \$50,000,000 in a targeted industry and provision of opportunities to leverage leadership in a high-priority targeted industry; and

The proposed amendments at N.J.A.C. 19:31-22.6(i) delete and replace “incentive” with “commitment” agreement as referenced in the existing provision regarding the termination fee.

N.J.A.C. 19:31-22.7 Review of completed application

N.J.A.C. 19:31-22.7(c) deletes and replaces “will” with “shall” and deletes “compliance by being in” as pertains to the confirmation of substantial good standing with certain State agencies as listed;

N.J.A.C. 19:31-22.7(c)3ii deletes and replaces “owner” and “authorized agent of the owner” with “chief executive officer” and “equivalent officer” as pertains to the certification to be included in the non-binding letter of intent; and

N.J.A.C. 19:31-22.7(e) deletes and replaces “owner” and “authorized agent of the owner” with “chief executive officer” and “an equivalent officer” as pertains to the certification as set forth at N.J.A.C. 19:31-22.5(a)2iv.

N.J.A.C. 19:31-22.8 Determination of grant amount; bonus award

In general, N.J.A.C. 19:31-22.8 provides for increased bonus amounts above the base tax credit for eligible businesses which meet any of several criteria.

At N.J.A.C. 19:31-22.8(d)1, the word “distress” would be inserted to create a full reference to the Municipal Revitalization index score.

The proposed amendments at N.J.A.C. 19:31-22.98(d)2 would reduce the bonus for additional investment from \$1,000 to \$500 per year for each additional amount of investment that exceeds the amount for eligibility by 40 percent, and reduce the maximum bonus to \$1,500 from \$3,000 per year.

At N.J.A.C. 19:31-22.8(d)3, proposed amendments delete and replace “commitment” with “eligibility” period;

At N.J.A.C. 19:31-22.8(d)3iii “\$1000” to is revised to “1,000;”

The proposed amendments at N.J.A.C. 19:31-22.8(d)6 delete and replace “that” with “with” and insert “in” as pertains to a business with certain employees in full-time positions at the project. Additional proposed amendments reduce the bonus relating to salary levels at the qualified project from \$250.00 to \$200.00 per year for the new or retained full-time employees that are at the qualified business facility during the eligibility period for each 35 percent by which the project’s median salary levels exceeds the county or government-restricted municipality median salary. The maximum increase would be reduced from \$1,500 to \$1,000 per year;

N.J.A.C. 19:31-22.8(d)7, which provides a \$500.00 per year bonus for an eligible business with a qualified business facility located in a qualified incentive tract, would be deleted;

Recodified N.J.A.C. 19:31-22.8(d)11 relates to eligible businesses that participate in a re-entry program for inmates. The proposed amendments would delete and replace “agreement” with “active partnership” and clarifies that the \$500 per year bonus is also available those that have previously entered an active partnership. In either case, the business must hire at least one full-time employee” from the re-entry program.

Recodified N.J.A.C. 19:31-22.8(d)14 would be amended to add geo-thermal, wind and any other renewable or distributed energy to the type of onsite energy that would qualify for a bonus of \$500.00 per year, provided it meets 50 percent of the business facility’s electric supply needs.

Proposed new language at recodified N.J.A.C. 10:31-22.8(d)17 would clarify that the \$500 bonus would apply “for each new or retained full-time job” in eligible businesses where a third or more of the members of the governing board self-identify as members of an under-represented community.

The proposed amendments at N.J.A.C. 19:31-22.8(f) would: 1. replace “at or associated with, the qualified business facility” with “subject to the project agreement” in both places they

appear in the paragraph; 2. add language authorizing the percentage reduction of credits for a project in a government-restricted municipality where the median salary of the jobs subject to the agreement is less than the median salary in the municipality, based on how far below median the new jobs are; and 3. add language allowing the Authority to withhold credits entirely where the jobs otherwise subject to the project agreement are 30 percent more below median salary for full-time workers in the county or government-restricted municipality at issue; and

N.J.A.C. 19:31-22.8(h) delete and replace “current” with “proposed” as pertains to the reference to certain in-State locations.

N.J.A.C. 19:31-22.9 Approval letter and commitment agreement

N.J.A.C. 19:31-22.9(b)2 deletes and replaces “an incentive” with “a project” as pertains to phase agreement and “incentive” with “commitment” agreement respectively;

The proposed amendments to the requirement at N.J.A.C. 19:31-22.9(b)8 that the eligible business must meet agreement requirements in P.L. 2020, c. 156 clarify that the “good standing” representations refer to “the Department of Environmental Protection, Department of Labor and Workforce Development, and the Department of the Treasury. They also so add language requiring “a practical corrective action plan” with the Departments where the Department deems appropriate. They delete the language “or meets the agreement requirements at paragraph (1) of subsection b. of section 71 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.7(c)1.”

At N.J.A.C. 19:31-22.9(b)10 new language has been added to make clear that the Authority may confirm with the above-referenced agencies, “that each contractor or subcontractor performing work at the qualified business facility is registered as required by ‘The Public Works Contractor Registration Act,’ P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.), has not been debarred by Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and possesses a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury;”

N.J.A.C. 19:31-22.9(b)11, which pertains to certain instances in which the eligible business is not in good standing nor entered into an agreement with the agencies referenced above and has been given written notice thereof, deletes and replaces “Authority” and “suspend” with “eligible business” and “forfeit” regarding the issuance of tax credits pending the resolution of the “underlying” violations “or other issues” and deletes “or noncompliance, or if the violation(s) or noncompliance remain unresolved and the suspension continues for two years, then, at the Authority’s sole option, the eligible business may forfeit the tax credit for those years; relating thereto;”

N.J.A.C. 19:31-22.9(c)6i would be amended to revise two citations from N.J.A.C. 19:31-22.10(a)5 to 3;

N.J.A.C. 19:31-22.9(c)8, which pertains to the instance that an eligible business shall not be required to enter into a community benefits agreement if the eligible business submits certain documentation to the Authority that documents that the local government agrees that there is

already an equivalent agreement in place, deletes and replaces “redevelopment agreement” with “approval letter from the Authority or a redevelopment agreement applicable to the qualified business facility, provided that the approval letter or redevelopment agreement” and adds that the approval letter or redevelopment agreement “includes provisions that meet or exceed the standards required for a community benefits agreement in this subsection, as determined by the Chief Executive Officer pursuant to rules adopted by the Authority;”

The proposed amendments at N.J.A.C. 19:31-22.9(d) delete and replace “completion” with “certification” as relates to the date upon which certification shall occur following any extensions for certifications following approval of the application; and

Finally, changes to N.J.A.C. 19:31-22.9(g) would delete and replaces “owner” with “chief executive officer” and “authorized agent of the owner” with “equivalent officer” pertaining to any submission required by the Authority pursuant to the approval letter or certifications at 22.9(f).

N.J.A.C. 19:31-22.10 Reporting requirements and annual reports

The proposed amendments at N.J.A.C. 19:31-22.10(a)1i and ii delete and replace “at, or associated with, the qualified business facility” with “in the State” regarding certain information to be provided in annual report submitted by the business;

Proposed new N.J.A.C. 19:31-22.10(a)3 provides that, as part of the annual report, the eligible business shall confirm that each contractor or subcontractor performing work at the qualified business facility is registered as required by “The Public Works Contractor Registration Act,” has not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and possesses a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury; and

The proposed amendments at N.J.A.C. 19:31-22.10(c) would delete and replace “owner” with “chief executive officer” and “authorized agent of the owner” with “equivalent officer” regarding certain information to be certified to under subsection (a).

N.J.A.C. 19:31-22.11 Tax credit amount; application and allocation of the tax credit

The proposed amendments at N.J.A.C. 19:31-22.11(f) clarify that the provision that the credit certificate or credit transfer certificate may be surrendered to the Division of Taxation in the Department of the Treasury for a cash payment equal to 90 percent of the amount of tax credits evidenced by the certificate, in addition to other requirements, applies when “the credit certificate or credit transfer certificate has not been sold or assigned previously.”

N.J.A.C. 19:31-22.14 Reduction and forfeiture of tax credits

Consistent with the proposal, proposed revisions to N.J.A.C. 10:31-22.14(b) and N.J.A.C. 19:31-22.14(c) deletes “at, or associated with, the qualified business facility,” with “subject to the project agreement” and “commitment” with “project” pertaining to the provision for certain

new full-time employees employed by the eligible business that, if reduced as detailed in the subsection, may result in the reevaluation of the net positive economic benefit of the project and reduction of the size of the award accordingly;

The proposed amendments at N.J.A.C. 19:31-22.14(h) clarify that any funds recaptured pursuant to this section, including penalties and interest, shall be net of costs incurred by the Authority.

N.J.A.C. 19:31-22.15 Effect of sale or lease of qualified facilities and relocation of qualified business facility

The proposed amendments at N.J.A.C. 19:31-22.15(b) revise the exemption that shall be applied for a small business to delete “or an eligible business engaged primarily in a targeted industry with less than 50 employees at application” as the term “small business” is already defined as being engaged primarily in a targeted industry, and the 50 employees cap was deleted by P.L. 2021, c. 160. In addition, the term “new cost benefit analyses” would be replaced with “cost comparison of the originally approved location and the alternate qualified business facility” as required for certain instances wherein an eligible business may change the location of the qualified business facility before certification of the capital investment.

N.J.A.C. 19:31-22.16 Affirmative action and prevailing wage

Proposed new N.J.A.C. 19:31-22.16(a) through (c) revises the section to: 1. more accurately delineate the Authority’s requirements related to affirmative action and prevailing wage, making clear that they apply for two years after the first certificate of compliance is issued; and, 2. clarify that during the commitment period, the application of the prevailing wage shall apply to building services at the qualified business facility pursuant to N.J.S.C. 19:31-22.3(b)8.

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

Social Impact

The proposed amendments, which revise the Emerge program to encourage economic development, job creation, and the retention of significant numbers of jobs in imminent danger of leaving the State, are intended to have a positive social impact.

The Emerge program is a key component of the State’s broader economic development plan, which balances economic impact, for example, stimulating high-quality job growth and private sector investment, with a focus on increasing equity and opportunity for all. This strategy is clearly demonstrated in the Economic Recovery Act of 2020’s overall approach, which establishes or amends 15 different programs with varying development objectives. While the Emerge program is primarily focused on job creation, other programs more directly address areas such as community development, small and micro business support, and other critical social issues, such as food security. Attracting high-quality jobs and private sector investments into the

State helps bolster long-term revenues and deepens the State's base of responsible corporate partners, all of which will reinforce the State's social initiatives.

In addition, within the Emerge program there are a number of features that directly focus on social improvement. For example, the program includes policy-tied bonuses to incentivize companies to establish prisoner re-entry programs, provide subsidized childcare for employees, and support local workforce development. The program also requires community benefits agreements for all projects over \$ 10,000,000, fostering stronger relationships between companies and their communities and supporting programs, such as youth development, workforce training, and free services to underserved communities in and around the project location. Further the program creates a Recovery Infrastructure Fund where businesses can meet their capital investment requirement by contributing to a fund for local infrastructure projects in the municipality hosting the project.

The program also includes fiscal protections to ensure transparency, equity, and faithful stewardship of taxpayer dollars; including, an inducement provision that enables the Authority to size awards to the amount necessary to induce the project to be sited in New Jersey.

Economic Impact

The proposed amendments are intended to bolster the State's economy by stimulating new high-quality economic development. The Emerge program is the primary job creation and large-scale retention tool in the New Jersey Economic Recovery Act of 2020. It specifically encourages economic development in the State's priority sectors, which have a high economic spill-over effect into other parts of the economy. In other words, these sectors tend to sell goods and services outside of the State's borders, thereby bringing cash into the State and fueling broader economic growth and vibrancy.

In addition, most projects participating in the Emerge program will have a minimum requirement for private capital investment. This private capital investment is, by definition, a durable and sustainable investment in the State's economic infrastructure. These investments will support long-term job creation opportunities after tax credits have been fully utilized and even if a given project does not meet its full potential.

Further, the proposed amendments require that the only projects that will provide the State a positive long-term economic benefit can participate in the Emerge program. This means that while taxpayers may provide short-term tax credits to attract a project to the State, that project is committed to operating in the State long enough to pay back two to four times the value of those credits through State payroll, sales, and other taxes. Additionally, the fact that jobs must be created and capital improvements completed before tax credits are provided to approved businesses, along with robust recapture and repayment provisions if the businesses fail to meet their long-term obligations, ensure substantial economic protections within the program.

Federal Standards Statement

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

Jobs Impact

The core focus of the Emerge program is to attract new private sector jobs into the New Jersey economy. In addition, the proposed amendments provide for the ability to also support projects that would retain a significant amount of private sector jobs that are at risk of being relocated to another state. The capital investment requirements of the program, which focus on new construction and refurbishment of industrial, office, and research and development properties, also ensure that participating projects will stimulate job growth in the building trades.

The Emerge program is a pay-for-performance program where tax credits are only provided to applicants once a project is fully executed, including completing required capital investments and creating jobs.

The Economic Recovery Act of 2020 creates a shared program cap between the Emerge program and the Aspire program of \$1.1 billion per year; however, actual cap usage will primarily be driven by the volume of approved applicants and individual per-job caps within the program. Prior to implementation, it is not possible to accurately forecast the number of jobs that will be supported by the Emerge program; but the Act and the rules provide a series of transparency measures to ensure regular reporting of the number of jobs created, including bi-annual program evaluation reports.

Agriculture Industry Impact

The proposed amendments may have a positive impact on the agricultural industry, which includes aquaculture and fisheries, through the targeted industry inclusion of the non-retail food and beverages industry. Specifically, an eligible business of the Emerge program may be within the agricultural industry through involvement with research and development activities that advance agricultural food innovation technologies. As a result, new or advanced technologies may benefit the State's agricultural industry operations for the production, processing, preservation, and distribution of raw agricultural goods into consumer food products.

Regulatory Flexibility Statement

The proposed amendments may impose reporting, recordkeeping, or other compliance requirements on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., however, any costs will be minimal and fully offset by the amount of financial assistance received. The proposed fees for the program are intended to ensure a source of necessary administrative fee revenue for NJEDA to more fully cover the costs of the program.

Further, the proposed amendments create significant new flexibilities and supports for small businesses to participate in the program, as compared to the State's previous jobs-based tax credit programs. For example, businesses in targeted industries with less than 100 full-time equivalent employees at the time of application do not have minimum capital investment

requirements, have lower minimum job requirements, and can more easily move their project's location to support accelerated growth.

In addition, the proposed amendments provide new features that allow approved applicants to use third-party, independent certified public accounting firms to support the tax credit certification process. This change is meant to improve regulatory compliance processes for all businesses and the Authority. The specific reporting, recordkeeping, and compliance requirements are discussed in the Summary above.

Housing Affordability Impact Analysis

The proposed amendments will not have an impact on the affordability of housing in the State and will not impact the amount or cost of housing units, including multi-family rental housing and for-sale housing in the State. The proposed amendments revise the Emerge program, which provides incentives to encourage economic development, job creation, and the retention of significant numbers of jobs in imminent danger of leaving the State.

Smart Growth Development Impact Analysis

The proposed amendments will not impact the number of housing units or result in any increase or decrease in the average cost of housing in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed amendments revise the Emerge program which provides incentives to encourage economic development, job creation, and the retention of significant numbers of jobs in imminent danger of leaving the State.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The proposed amendments will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State.

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

SUBCHAPTER 22. EMERGE [PROGRAM RULES]

19:31-22.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement the provisions of the New Jersey Economic Recovery Act of 2020, establishing the Emerge Program Act (Act), sections 68 through 81 of P.L. 2020, c. 156, **as amended by P.L. 2021, c. 160**. The Act authorizes the Authority to administer the program to encourage economic development, job creation, and the retention of significant numbers of jobs in imminent danger of leaving the State. The Authority Board may approve the award of tax credits to a business upon application of the business demonstrating its eligibility under the Act and this subchapter and following the execution of a letter of intent and the payment of fees,

subject to the limitations set forth in this subchapter. The value of all tax credits approved by the Authority for businesses eligible pursuant to section 71 of P.L. 2020, c. 156 shall be subject to the limitations set forth in section 98 of P.L. 2020, c. 156.

19:31-22.2 Definitions

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

“Act” means the Emerge Program Act, sections 68 through 81 of P.L. 2020, c. 156.

“Affiliate” means an entity that directly or indirectly controls, is under common control with, or is controlled by, the business. Control exists in all cases in which the entity is a member of a controlled group of corporations, as defined pursuant to section 1563 of the Internal Revenue Code of 1986 (26 U.S.C. § 1563), or the entity is an organization in a group of organizations under common control, as defined pursuant to subsection (c) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. § 414). A taxpayer may establish, by clear and convincing evidence, as determined by the Director of the Division of Taxation in the Department of the Treasury, that control exists in situations involving lesser percentages of ownership than required by sections 1563 and 414 of the Internal Revenue Code of 1986 (26 U.S.C. §§ 1563 and 414). An affiliate of a business may contribute to meeting either the capital investment or full-time employee requirements of a business that applies for a credit under section 71 of P.L. 2020, c. 156.

“Approval letter” means the letter sent by the Authority to the eligible business awarded tax credits under the program and countersigned by the eligible business pursuant to N.J.A.C. 19:31-22.9(a), which sets forth the conditions that must be met by the eligible business before the execution of a commitment agreement.

“Authority” means the New Jersey Economic Development Authority established by section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

[“Authorized agent of the owner” means the chief executive officer or equivalent officer for North American operations of the business.]

“Aviation district” means all areas within the boundaries of the Atlantic City International Airport, established pursuant to section 24 of P.L. 1991, c. 252 (N.J.S.A. 27:25A-24), and the Federal Aviation Administration William J. Hughes Technical Center and the area within a one-mile radius of the outermost boundary of the Atlantic City International Airport and the Federal Aviation Administration William J. Hughes Technical Center.

“Board” means the Board of members of the New Jersey Economic Development Authority, established pursuant to section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

“Building services” means any cleaning or routine building maintenance work, including, but not limited to, sweeping, vacuuming, floor cleaning, cleaning of rest rooms, collecting refuse or

trash, window cleaning, securing, patrolling, or other work in connection with the care or securing of an existing building, including services typically provided by a door-attendant or concierge. “Building services” shall not include any skilled maintenance work, professional services, or other public work for which a contractor is required to pay the “prevailing wage” as defined at section 2 of P.L. 1963, c. 150 (N.J.S.A. 34:11-56.26).

“Business” means an applicant proposing to own or lease premises in a qualified business facility that is: a corporation that is subject to the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5); sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3); section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15); or N.J.S.A. 17B:23-5, or is a partnership, S corporation, limited liability company, or non-profit corporation. [A business shall include an affiliate of the business if that business applies for a credit based upon any capital investment made by full-time employees of an affiliate.] If the business or tenant is a cooperative or part of a cooperative, then the cooperative may qualify for credits by counting the full-time employees and capital investments of its member organizations, and the cooperative may distribute credits to its member organizations. If the business or tenant is a cooperative that leases to its member organizations, the lease shall be treated as a lease to an affiliate or affiliates. After approval by the Board of the award, if the business transfers the project, in whole or in part, or the business merges into another company, a business shall include a successor, as determined by the Authority in its sole discretion, to the business and a successor, as determined by the Authority in its sole discretion, to an affiliate of the business if the business applied for a credit based upon any capital investment made by full-time employees of the affiliate, provided any successor must execute the [incentive] **commitment** agreement, which shall include: the obligation to not reduce the number of full-time employees in the successor’s Statewide employment in the last tax period prior to the approval of the award; an agreement that all parties to the [incentive] **commitment** agreement are jointly and severally liable under the [incentive] **commitment** agreement; and an acknowledgment that the tax credit will be allocated to each party to the [incentive] **commitment** agreement in accordance with the number of full-time employees that each employs [at, or associated with, the qualified business facility].

“Capital investment” means expenses that a business or an affiliate of the business incurs, **or is incurred on behalf of the business or affiliate by its landlord, which may be demonstrated through an executed letter of intent or lease**, following the submission of a complete application to the Authority pursuant to section 72 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.5, but prior to the project completion date, as shall be defined in the project agreement, for:

1. Site preparation and construction, repair, renovation, improvement, equipping, or furnishing on real property or of a building, structure, facility, or improvement to real property, site-related utility, including, but not limited to, water, electric, sewer, and stormwater, and transportation infrastructure improvements, plantings, solar panels and components, energy storage components, installation costs of solar energy systems, or other environmental components required to attain the level of silver rating and gold rating standards or above in the LEED building rating system, but only to the extent that such capital investments have not received any grant financial assistance from any other State funding source, including N.J.S.A. 52:27H-80 et seq., but does not include site acquisition;

2. Obtaining and installing furnishings and machinery, apparatus, or equipment, including but not limited to, material goods subject to bonus depreciation under sections 168 and 179 of the Federal Internal Revenue Code (26 U.S.C. §§ 168 and 179), for the operation of a business on real property or in a building, structure, facility, or improvement to real property; or any combination of the foregoing. Vehicles and heavy equipment not permanently located in the building, structure, facility, or improvement shall not constitute a capital investment. Capital investment shall include the value of a capital lease, as defined by generally accepted accounting practices (GAAP), of furnishings and machinery, apparatus, or equipment, based on the shorter of the useful life of the leased property or the commitment period; and

3. Associated soft costs, which shall not exceed 20 percent of all capital investment.

“College or university” means a county college, an independent institution of higher education, a public research university, or a State college.

“Commitment agreement” means the contract between an eligible business and the Authority pursuant to N.J.A.C. 19:31-22.9, that the parties execute after the conditions in the approval letter are met.

“Commitment period” means a period that is 1.5 times the eligibility period specified in the project agreement entered into pursuant to section 73 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.9, rounded up, for each applicable phase agreement.

“Community benefits agreement” means the agreement between the eligible business, the municipality or county, and the Authority pursuant to N.J.A.C. 19:31-22.9(c).

“Complex of buildings” means buildings that are part of the same financing plan and operational plan. The buildings comprising a complex of buildings may be non-contiguous and in geographical locations with different factors that affect the tax credit calculation.

“County college” means an educational institution established by one or more counties, pursuant to Chapter 64A of Title 18A of the New Jersey Statutes.

“Director” means the Director of the Division of Taxation in the Department of the Treasury.

“Distressed municipality” means a municipality that is qualified to receive assistance pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.), a municipality under the supervision of the Local Finance Board pursuant to the provisions of the Local Government Supervision Act (1947), P.L. 1947, c. 151 (N.J.S.A. 52:27BB-1 et seq.), a municipality identified by the Director of the Division of Local Government Services in the Department of Community Affairs, to be facing serious fiscal distress, an SDA municipality, or a municipality in which a major rail station is located.

“Doctoral university” means a university located within New Jersey that is classified as a doctoral university under the Carnegie Classification of Institutions of Higher Education’s Basic Classification methodology on August 7, 2017, the effective date of P.L. 2017, c. 221.

“Eligibility period” means the period in which an eligible business may claim a tax credit under the program for a given project phase, beginning with the tax period in which the Authority accepts certification of the eligible business that it has met the capital investment, employment, and other eligibility requirements of the program for the respective project, or the respective project phase, pursuant to N.J.A.C. 19:31-22.9(d), and extending thereafter for a term of not more than seven years. The term shall be determined at the discretion of the applicant at application, provided that the term of the eligibility period may consist of nonconsecutive tax years if the applicant elects, at any time after the end of the first tax period of the eligibility period, to defer the continuation of the eligibility period to a subsequent tax period. The applicant must be, at the time of the deferral election, in compliance with the requirements of the program. The Authority may extend the eligibility period one additional tax period to accommodate a prorated payment pursuant to paragraph (2) of subsection a. of section 77 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.10(d).

“Eligible business” means any business that satisfies the criteria set forth at section 71 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.3 at the time of application for tax credits under the program.

“Eligible position” or “full-time job” means a full-time position in a business in this State that the business has filled with a full-time employee. An eligible position shall not include an independent contractor or consultant, unless the independent contractor or consultant meets the definition of a full-time employee in the Act and this section. An eligible position may not include a position that is engaged in final point-of-sale retail, unless the position is located at a qualified business facility used in connection with the operation of a tourism destination project located in the Atlantic City Tourism District, as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219).

“Employment and Investment Corridor” means the portions of the qualified incentive area that are not located within a distressed municipality and which:

1. Are designated pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.), as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), a designated center under the State Development and Redevelopment Plan, or a designated growth center in an endorsed plan [until June 30, 2013], or until the State Planning Commission revises and readopts New Jersey’s State [Strategic] **Development and Redevelopment** Plan and adopts rules to revise this definition;

2. Intersect with portions of: a port district, a qualified incentive tract, or Federally owned land approved for closure under a Federal Commission on Base Realignment and Closure action;

3. Are the proposed site of a qualified incubator facility, a tourism-destination project, or transit-oriented development; or

4. At the time of application, contain:

i. A vacant commercial building or campus having over 400,000 square feet of office, laboratory, or industrial space, **or any combination of office, laboratory, or industrial space**, available for occupancy for a period of over one year, provided that “employment and investment corridor” shall no longer include the building or campus when there is less than 400,000 square feet of vacant space; or

ii. A site that has been negatively impacted by the approval of a “qualified business facility,” as defined pursuant to section 2 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208).

“Enhanced area” means **a municipality that contains** an urban transit hub as defined at section 2 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208); the five municipalities with the highest poverty rates according to the 2017 Municipal Revitalization Index; and the three municipalities with the highest percentage of Supplemental Nutrition Assistance Program recipients according to the 2017 Municipal Revitalization Index.

“Full-time employee” means:

1. A person:

i. Who is employed by a business for consideration for at least 35 hours a week and 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.;

ii. Who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization for at least 35 hours a week and 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.;

iii. Who is a partner of a business 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.;

iv. Who is a resident of another state, and would be eligible pursuant to subparagraphs 1i, ii, or iii above, but whose income is not subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., **due to a reciprocity agreement with the other state**; or

v. The Authority may determine a different number of hours a week or other standard of service generally accepted by custom or practice as full-time employment for subparagraphs 1i, ii, or iii above. A “full-time employee” shall include, but shall not be limited to, an employee who has been hired by way of a labor union hiring hall, or its equivalent, provided that the 35 hours of employment per week [at, or associated with, the qualified business facility] **in the State** shall constitute one “full-time employee,” regardless of whether or not the hours of work were performed by one or more persons;

2. A “full time employee” further means a person eligible pursuant to paragraph 1 above who, [except for purposes of the Statewide workforce, and] as evidenced by documentation acceptable to the Authority,[:

i. Is] is provided, by the business, no later than 90 days of hire, employee health benefits under a health benefits plan authorized pursuant to State or Federal law; provided, however, that with respect to a logistics, manufacturing, energy, defense, aviation, or maritime business, excluding primarily warehouse or distribution operations, located in a port district having a container terminal, the requirement that employee health benefits are to be provided shall be deemed to be satisfied if the benefits are provided in accordance with industry practice by a third party obligated to provide such benefits pursuant to a collective bargaining agreement; and

[ii. Is paid no less than \$15.00 per hour or 120 percent of the minimum wage fixed under subsection a. of section 5 of P.L. 1966, c. 113 (N.J.S.A. 34:11-56a4), whichever is higher;]

3. “Full-time employee” shall not include any person who works as an independent contractor or on a consulting basis for the business or a contract worker whose income is subject to withholding, as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., except that any person working as an independent contractor or contract worker whose income is subject to withholding, as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., for the business shall be deemed a full-time employee if the business demonstrates to the Authority that:

i. The person working as an independent contractor or contract worker for the business works at least 35 hours per week or renders any other standard service generally accepted by custom or practice as full-time employment;

ii. The person is provided, at the date of initial engagement, as evidenced by documentation acceptable to the Authority, employee health benefits under a health benefits plan authorized pursuant to State or Federal law;

iii. The business provides documentation to the Authority to permit the Authority to verify the compensation paid to, the withholdings of, and the time worked by, the person working as an independent contractor or contract worker; and

iv. The business shall provide to the Authority an annual report that identifies the number of persons working as independent contractors or contract workers for the business and their contractual or partnering relationship with the business; and

4. “Full-time employee” shall not include any person who, at the time of project application, works in New Jersey for consideration for at least 35 hours per week for the business, or who renders any other standard of service generally accepted by custom or practice as full-time employment, but who, prior to project application, works under an employee leasing agreement between the business and an employee leasing company that is not a professional employer

organization or who was not provided, by the business, with employee health benefits under a health benefits plan authorized pursuant to State or Federal law.

“Government-restricted municipality” means a municipality in this State with a municipal revitalization index distress score of at least 75, that met the criteria for designation as an urban aid municipality in the 2019 State fiscal year, and that, on January 7, 2021, the effective date of P.L. 2020, c. 156, is subject to financial restrictions imposed pursuant to the Municipal Stabilization and Recovery Act, P.L. 2016, c. 4 (N.J.S.A. 52:27BBBB-1 et seq.), or is restricted in its ability to levy property taxes on property in that municipality as a result of the State of New Jersey owning or controlling property representing at least 25 percent of the total land area of the municipality, or as a result of the Federal government owning or controlling at least 50 acres of the total land area of the municipality, which is dedicated as a national natural landmark.

“Incentive area” means:

1. An aviation district;
2. A port district;
3. A distressed municipality or [transit hub municipality or] **enhanced area**;
4. An area designated pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.), as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), Planning Area 3 (Fringe Planning Area); or a Designated Center under the State Development and Redevelopment Plan[, provided an area designated as Planning Area 2 (Suburban) or Planning Area 3 (Fringe Planning Area) or a Designated Center shall be located within a one-half mile radius of the mid-point, with bicycle and pedestrian connectivity, 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];
5. An area located within a smart growth area and planning area designated in a master plan adopted by the New Jersey Meadowlands Commission pursuant to subsection (i) of section 6 of P.L. 1968, c. 404 (N.J.S.A. 13:17-6), or subject to a redevelopment plan adopted by the New Jersey Meadowlands Commission pursuant to section 20 of P.L. 1968, c. 404 (N.J.S.A. 13:17-21);
6. An area located within any land owned by the New Jersey Sports and Exposition Authority, established pursuant to P.L. 1971, c. 137 (N.J.S.A. 5:10-1 et seq.), within the boundaries of the Hackensack Meadowlands District, as delineated at section 4 of P.L. 1968, c. 404 (N.J.S.A. 13:17-4);
7. An area located within a regional growth area, rural development area zoned for industrial use as of December 5, 2016, the effective date of P.L. 2016, c. 75, or town, village, or a military and Federal installation area designated in the comprehensive management plan prepared and

adopted by the Pinelands Commission pursuant to the Pinelands Protection Act, P.L. 1979, c. 111 (N.J.S.A. 13:18A-1 et seq.);

8. An area located within a government-restricted municipality;

9. An area located within land approved for closure under any Federal Commission on Base Realignment and Closure action;

10. An area located within an area designated pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.), as Planning Area 4A (Rural Planning Area), Planning Area 4B (Rural/Environmentally Sensitive), or Planning Area 5 (Environmentally Sensitive), so long as that area designated as Planning Area 4A (Rural Planning Area), Planning Area 4B (Rural/Environmentally Sensitive), or Planning Area 5 (Environmentally Sensitive) is located within:

i. A designated center under the State Development and Redevelopment Plan;

ii. A designated growth center in an endorsed plan until the State Planning Commission revises and readopts New Jersey's State [Strategic] **Development and Redevelopment** Plan and adopts rules to revise this definition as it pertains to Statewide Planning Areas;

iii. Any area determined to be in need of redevelopment pursuant to sections 5 and 6 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-5 and 40A:12A-6), or in need of rehabilitation pursuant to section 14 of P.L. 1992, c. 79 (N.J.S.A. 40A:12A-14);

iv. Any area on which a structure exists or previously existed, including any desired expansion of the footprint of the existing or previously existing structure, provided the expansion otherwise complies with all applicable Federal, State, county, and local permits and approvals; or

v. Any area on which an existing tourism destination project is located; or

11. An area located in a qualified opportunity zone.

“Independent institution of higher education” means a college or university incorporated and located in New Jersey, which, by virtue of law, character, or license is a nonprofit educational institution authorized to grant academic degrees and which provides a level of education that is equivalent to the education provided by the State's public institutions of higher education, as attested by the receipt of, and continuation of regional accreditation by, the Middle States Association of Colleges and Schools, and which is eligible to receive State aid under the provisions of the Constitution of the United States and the Constitution of the State of New Jersey, but does not include any educational institution dedicated primarily to the education or training of ministers, priests, rabbis, or other professional persons in the field of religion.

“Industrial premises” or “industrial space” means premises or space in which at least 51 percent of the square footage will be, or has been, used for the assembling, processing, manufacturing, or any combination thereof, of finished or partially finished products from

materials or fabricated parts, including, but not limited to, factories or as a warehouse if the business uses the warehouse as part of the chain of distribution for products assembled, processed, manufactured, or any combination thereof, by the business at the qualified business facility; for the breaking or demolishing of finished, or partially finished, products; or for the production of oil or gas or the generation or transformation of electricity.

“Industrial use” means assembling, processing, manufacturing, or any combination thereof, of finished or partially finished products from materials or fabricated parts; the breaking or demolishing of finished or partially finished products; or the production of oil or gas or the generation or transformation of electricity. “Industrial use” includes farming purposes as that term is defined at 26 U.S.C. § 6420(c)(3)(A), undertaken in an industrial space.

“Infrastructure Fund” means the Recovery Infrastructure Fund established pursuant to section 79 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.18 to fund local infrastructure improvements.

“Labor harmony agreement” means an agreement between a business that serves as the owner or operator of a retail establishment or distribution center and one or more labor organizations, which requires, for the duration of the agreement: that any participating labor organization and its members agree to refrain from picketing, work stoppages, boycotts, or other economic interference against the business; and that the business agrees to maintain a neutral posture with respect to efforts of any participating labor organization to represent employees at an establishment or other unit in the retail establishment or distribution center, agrees to permit the labor organization to have access to the employees, and agrees to guarantee to the labor organization the right to obtain recognition as the exclusive collective bargaining representatives of the employees in an establishment or unit at the retail establishment or distribution center by demonstrating to the New Jersey State Board of Mediation, Division of Private Employment Dispute Settlement, or a mutually agreed-upon, neutral, third-party, that a majority of workers in the unit have shown their preference for the labor organization to be their representative by signing authorization cards indicating that preference. The labor organization or organizations shall be from a list of labor organizations that have requested to be on the list and that the Commissioner of Labor and Workforce Development has determined represent substantial numbers of retail or distribution center employees in the State.

“Major rail station” means a railroad station that is located within a qualified incentive area and that provides, to the public access, to a minimum of six rail passenger service lines operated by the New Jersey Transit Corporation.

“Mega project” means a project of special economic importance, at which 500 or more new full-time jobs are created, having capital investment of at least \$50,000,000 in a targeted industry and that provides opportunities to leverage leadership in a high-priority targeted industry as demonstrated by factors including, but not limited to: being undertaken by a business that is making an industry leading investment in a new technology or high-growth sub-industry level or catalyzing a new sub-industry or industry-cluster within the State.

“Minimum environmental and sustainability standards” means the standards established by the Authority in accordance with the green building manual prepared by the Commissioner of the

Department of Community Affairs pursuant to section 1 of P.L. 2007, c. 132 (N.J.S.A. 52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources to reduce environmental degradation and encourage long-term cost reduction. The Authority shall publish these standards on its website.

“Municipal Revitalization Index” means the most updated municipal revitalization distress score, as published at the time of project Board approval by the Department of Community Affairs.

“New full-time job” means an eligible position that did not previously exist in this State created by a business [at, or associated with, a qualified business facility]. For the purposes of determining the number of new full-time jobs, the eligible positions of an affiliate shall be considered eligible positions of the business.

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

“Other eligible area” means the portions of the incentive area that are not located within a distressed municipality, or the employment and investment corridor.

“Partnership” means an entity classified as a partnership for Federal income tax purposes.

“Phased project” means a project with an initial phase that is a mega project and each subsequent phase includes a minimum capital investment of \$25 million and minimum of 250 new full-time jobs.

“Port district” means the portions of an incentive area that are located within the Port of New York District of the Port Authority of New York and New Jersey, as defined in Article II of the Compact Between the States of New York and New Jersey of 1921; or a 15-mile radius of the outermost boundary of each marine terminal facility established, acquired, constructed, rehabilitated, or improved by the South Jersey Port District established pursuant to the South Jersey Port Corporation Act, P.L. 1968, c. 60 (N.J.S.A. 12:11A-1 et seq.).

“Professional employer organization” means an employee leasing company registered with the Department of Labor and Workforce Development pursuant to P.L. 2001, c. 260 (N.J.S.A. 34:8-67 et seq.).

“Program” means the Emerge program established by sections 68 through 81 of P.L. 2020, c. 156 and as implemented by this subchapter.

“Project” means the capital investment at a qualified business facility and the employment commitment pursuant to the project agreement.

“Project agreement” [or “incentive agreement”] means the approval letter and the commitment agreement executed between an eligible business and the Authority, which together set forth the terms and conditions under which the eligible business may receive the tax credit award authorized by the Board pursuant to the Emerge program.

“Project phase agreement” [or “incentive phase agreement”] means a sub-agreement of the project agreement that governs the timing, capital investment, employment levels, and other details of the respective phase.

“Public research university” means a public research university as defined at section 3 of P.L. 1994, c. 48 (N.J.S.A. 18A:3B-3).

“Qualified business facility” means any building, complex of buildings, or structural components of buildings, and all machinery and equipment located therein, used in connection with the operation of a business that is not engaged in final point-of-sale retail business at that location, unless the building, complex of buildings, or structural components of buildings, and all machinery and equipment therein, are used in connection with the operation of a tourism destination project located in the Atlantic City Tourism District, as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219). In determining whether a qualified business facility for professional services is engaged in final point-of-sale retail, the Authority shall consider several factors, including, but not limited to, whether the business is a small business and whether the preponderance of its customer base is located within this State.

“Quality child care facility” means a child care center licensed by the Department of Children and **Families or a registered family child care home with the Department of Human Services**, operating continuously, which has not been subject to an enforcement action, and which has and maintains a [total] licensed capacity [of at least 60] **for** children age [six] **13** years or younger **who attend for less than 24 hours a day**.

“Qualified incentive tract” means a population census tract having a poverty rate of 20 percent or more; or a census tract in which the median family income for the census tract does not exceed 80 percent of the greater of the Statewide median family income or the median family income of the metropolitan statistical area in which the census tract is situated.

“Qualified incubator facility” means a commercial building located within an incentive area: that contains 5,000 or more square feet of office, laboratory, or industrial space; that is located near, and presents opportunities for collaboration with, a research institution, teaching hospital, college, or university; and within which at least 50 percent of the gross leasable area is restricted for use by one or more technology startup companies during the commitment period.

“Qualified opportunity zone” means a Federal population census tract in this State that was eligible to be designated as a qualified opportunity zone pursuant to 26 U.S.C. § 1400Z-1.

“Research and development premises” or “research and development space” means premises or space in which at least 51 percent of the square footage will be, or has been, used for research and development.

“Retained full-time job” means an eligible position that currently exists in this State and is filled by a full-time employee, but which, because of a potential relocation by the business, is at risk of being lost to another state or country[, or of being eliminated]. For the purposes of determining the number of retained full-time jobs, the eligible positions of an affiliate shall be considered eligible positions of the business.

“SDA district” means an SDA district as defined at section 3 of P.L. 2000, c. 72 (N.J.S.A. 18A:7G-3).

“SDA municipality” means a municipality in which an SDA district is situated.

“Small business” means a business engaged primarily in a targeted industry, with fewer than 100 employees, as determined six months before application and at the time of application. Employees of a small business shall include a person who is employed by a business for consideration for at least 35 hours a week; who is employed pursuant to an employee leasing agreement for at least 35 hours a week; or who is a partner of a business who works for the partnership for at least 35 hours a week. Employee of a small business shall also include any person who works as an independent contractor for the business or a contract worker who works at the business for at least 35 hours a week. For those persons who are employed by the business or who work for the business as independent contractors or contract workers for less than 35 hours a week, 35 hours of employment a week shall constitute one employee, regardless of whether or not the hours of work were performed by one or more persons. The Authority may determine a different number of hours a week or other standard of service generally accepted by custom or practice as full-time employment. For purposes of the number of employees, a small business shall include all of its affiliates, regardless of whether the affiliate may contribute full-time jobs or capital investment to the project.

“Soft costs” means all costs associated with financing, design, engineering, legal, or real estate commissions, including, but not limited to, architect fees, permit fees, loan origination and closing costs, construction management, and freight and shipping delivery, but not including early lease termination costs, air fare, mileage, tolls, gas, meals, packing material, marketing, temporary signage, incentive consultant fees, Authority fees, loan interest payments, escrows, or other similar costs.

“Square foot” or “square footage” means the sum of all areas on all floors of a building or structure included within the outside faces of its exterior walls, including all vertical penetration areas, for circulation and shaft areas that connect one floor to another, disregarding cornices, pilasters, buttresses, and similar structures, that extend beyond the wall faces.

“Square foot of gross leasable area” or “square footage of gross leasable area” or “gross leasable area” means rentable area of the building or structure as calculated pursuant to the measuring standards of the project. This standard will be defined in the lease for tenant

applicants. The rentable area measures the tenant's pro rata portion of the entire office floor, including public corridors, restrooms, janitor closets, utility closets, and machine rooms used in common with other tenants, but excluding elements of the building or structure that penetrate through the floor to areas below. The rentable area of a floor is fixed for the life of a building or structure and is not affected by changes in corridor sizes or configuration.

"State college" means a State college or university established pursuant to Chapter 64 of Title 18A of the New Jersey Statutes.

"Statewide workforce" means the total number of full-time employees in the Statewide workforce of the business and any affiliate of the business, if the affiliate contributes any capital investment or full-time employees. "Statewide workforce" shall not include a new eligible position [at, or associated with, the qualified business facility] unless the new eligible position is in addition to the number of full-time employees specified in the commitment agreement and the business is not receiving an additional tax credit award for the new eligible position. Further, "Statewide workforce" shall not include full-time employees at any final point-of-sale retail facilities unless the project, as approved by the Board, includes full-time employees engaged in final point-of-sale retail.

"Substantial environmental remediation" means the completion of the necessary actions to investigate and cleanup or respond to any known, suspected, or threatened discharge of contaminants, including, as necessary, the preliminary assessment, site investigation, remedial investigation, and remedial action, pursuant to N.J.S.A. 58:10B-1 et seq., which shall equal at least five percent of the capital investment in a qualified business facility."

"Targeted industry" means any industry identified from time to time by the Authority that shall initially include advanced transportation and logistics, advanced manufacturing, aviation, autonomous vehicle and zero-emission vehicle research or development, clean energy, life sciences, hemp processing, information and high technology, finance and insurance, professional services, film and digital media, non-retail food and beverage businesses, including food innovation, and other innovative industries that disrupt current technologies or business models. A project shall be considered to be in a targeted industry if the primary activity undertaken by the full-time employees will be in a targeted industry, or if the business is engaged primarily in a targeted industry. An eligible business shall be considered to be in a targeted industry if the project is for full-time employees of a division that primarily undertakes activity within the definition of a targeted industry, or the eligible business is a subsidiary of an entity that is engaged primarily in a targeted industry, even if the project is for full-time employees who do not work directly in the targeted industry. The Authority may consider whether a business is engaged primarily in another innovative industry that disrupts current technologies or business models, by assessing factors including, but not limited to, whether businesses in the industry are offering products or services that significantly improve current market offerings on the basis of price or other performance levels, whether the new industry creates opportunities for new firms to enter and redefine the supply chain or value chain of an industry, or whether the industry utilizes new technology or business processes that allow New Jersey-based firms to collect a share of revenues that were traditionally only available to companies in other geographies.

“Technology startup company” means a for-profit business that has been in operation fewer than seven years at the time that it initially occupies or expands in a qualified business facility and is developing or possesses a proprietary technology or business method of a high technology or life science-related product, process, or service, which proprietary technology or business method the business intends to move to commercialization. The business shall be deemed to have begun operation on the date that the business first hired at least one employee in a full-time position.

“Total project cost” means the greater of the actual cost or the estimated cost to be incurred in connection with the project by the business or its landlord until the issuance of a permanent certificate of occupancy, or upon such other event evidencing project completion, as set forth in the commitment agreement.

“Tourism-destination project” means a qualified non-gaming business facility that will be among the most visited privately owned or operated tourism or recreation sites in the State, and which is located within the incentive area and has been determined by the Authority to be in an area appropriate for development and in need of economic development incentive assistance, including a non-gaming business within an established tourism district with a significant impact on the economic viability of that tourism district.

“Transit-oriented development” means a qualified business facility located within a 1/2-mile radius, or one-mile radius for projects located in a government-restricted municipality, surrounding the mid-point of a New Jersey Transit Corporation, Port Authority Transit Corporation, or Port Authority Trans-Hudson Corporation rail, bus, or ferry station platform area, including all light rail stations.

“Transit hub” means an urban transit hub, as defined at section 2 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208), that is located within an eligible municipality, as defined at section 2 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208), and that is also located within an incentive area.

“Transit hub municipality” means a Transit Village or a municipality: which qualifies for State aid pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.), or which has continued to be a qualified municipality thereunder pursuant to P.L. 2007, c. 111; and in which 30 percent or more of the value of real property was exempt from local property taxation during tax year 2006. The percentage of exempt property shall be calculated by dividing the total exempt value by the sum of the net valuation which is taxable and that which is tax exempt.

“Transit village” means a municipality that has been designated as a transit village by the Commissioner of the Department of Transportation and the Transit Village Task Force.

“Withholdings” means the amount withheld by a business from the wages of full-time employees, or estimated taxes paid by, or on behalf of, partners who are full-time employees, or any combination thereof, pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. Withholdings shall not include amounts withheld by a business from stock options or from stock options, money, or other payments given to a full-time employee pursuant to the

termination of employment of the full-time employee. Withholdings shall include amounts withheld by a business from money or other payments given to a full-time employee pursuant to a bonus for commencing employment or for services rendered by the full-time employee.

19:31-22.3 Eligibility criteria

(a) A business eligible pursuant to this section may submit an application to the Authority in accordance with the provisions of section 72 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.5 on or after May 20, 2021, the effective date of this subchapter, but prior to March 1, 2027.

(b) The Authority shall make the determination that an applicant has met the criteria for eligibility for a tax award and shall determine the amount of the award. In order for a business to be eligible for tax credits under the program, [a business's authorized agent of the owner,] **the chief executive officer of the business or an equivalent officer** shall demonstrate to the Authority at the time of application that:

1. The business will make, acquire, or lease a capital investment at the qualified business facility equal to or greater than the applicable amount set forth at (c) below;

2. The business will create or retain new and retained full-time jobs [at, or associated with, the qualified business facility] **in the State** in an amount equal to or greater than the applicable minimum number of new or retained full-time jobs required to be eligible as set forth at (d) below. To qualify as an eligible position or full-time job, the business must demonstrate to the Authority's satisfaction that the employee spends at least 80 percent of the individual's work time in this State and that the eligible position requires an employee to have the individual's primary place of work in this State;

3. The qualified business facility is located in a qualified incentive area;

4. The award of tax credits will be a material factor in the business's decision to create or retain the number of new and retained full-time jobs set forth in its application, except that:

i. The award of tax credits shall not be considered a material factor in the creation or retention of full-time jobs filled by employees providing professional services, as defined at N.J.S.A. 14A:17-3(1), and their direct administrative support staff, unless as of the date of the business's application, the full-time job is filled by an employee whose primary business office is located outside of the State. Direct administrative support staff shall not include employees in information technology, human resources, or employee relations positions; and

ii. In determining whether a position provides professional services subject to (b)4i above, the Authority shall consider several factors, including, but not limited to, whether the business is a small business or whether the preponderance of its customer base is located within this State;

5. The award of tax credits, the capital investment resultant from the award of tax credits, and the resultant creation and retention of new and retained full-time jobs will yield a net positive economic benefit, as calculated by the Authority, to the State equaling at least 400 percent of the

requested tax credit allocation amount except as listed at (b)5i and ii below. For a phased project, the requested tax credit allocation amount for the initial phase shall equal at least 400 percent of the requested tax credit allocation amount except as listed at (b)5i and ii below, and, for each phase thereafter, the cumulative net positive economic benefit shall equal at least 400 percent of the requested tax credit allocation amount except as listed at (b)5i and ii below. The net positive economic benefit determination shall be calculated prior to considering the value of the requested tax credit under the program and shall be based on the benefits generated during the period of time from approval through the end of the commitment period. The net positive economic benefit may be based on the benefits generated through the end of the longer period of extended commitment that the business may elect for purposes of receiving credit for benefits projected to occur after the expiration of the commitment period, pursuant to (b)5iv below.

i. An award of tax credits to a business for a qualified business facility located in a distressed municipality or [transit hub municipality] **an enhanced area** shall yield a net economic positive benefit to the State, based on the benefits generated during the period of time from approval through the end of the commitment period, that equals at least 300 percent of the requested tax credit amount.

ii. An award of tax credits to a business for a qualified business facility located in a government-restricted municipality, or for a mega project, shall yield a net positive economic benefit to the State, based on the benefits generated during the period of time from approval through the end of the commitment period, that equals at least 200 percent of the requested tax credit amount.

iii. The net positive economic benefits calculated for all projects shall be evaluated by the Authority on a present value basis with the requested tax credit allocation amount discounted to present value at the same discount rate as the benefits from capital investment resultant from the award of tax credits and the resultant retention and creation of full-time jobs as provided at (b)5iv below.

iv. A business may elect a period of extended commitment [after] **beyond** the commitment period for which time the economic benefits shall be creditable by the Authority to the determination of the net positive economic benefit of the project. In no event, shall the period for which the net positive economic benefit be determined, including any extended commitment period, exceed 20 years. [If the business makes this election, the net positive economic benefits calculated shall be additionally discounted by the Authority to reflect the uncertainty of the business's location after the commitment period expires.] A business electing a period of extended commitment and failing to maintain the project through the expiration of that extended commitment period shall be obligated to repay a proportion of the incremental benefits received on account of having extended the commitment period, taking into consideration the number of years of extended commitment during which the business maintained the project.

v. If, during the term of the program, the methodology used by the Authority in projecting the net positive economic benefits of a project in making the determination required pursuant to this paragraph is modified, the Authority may adjust, prospectively, the respective percentage thresholds by which the benefits must exceed the requested tax credit allocation amount set forth

pursuant to this paragraph to ensure consistent application of the respective percentage thresholds. Any modification to the methodology shall be applied prospectively. Prospective application means using the modified methodology or respective percentages to pending applications and to projects that have been previously approved if the business requests a modification, or this subchapter or the [incentive] **commitment** agreement requires or authorizes the Authority to conduct a reevaluation of the net positive economic benefit;

6. The qualified business facility shall be in compliance with minimum environmental and sustainability standards upon completion of the project;

7. The project shall comply with the Authority's affirmative action requirements, adopted pursuant to section 4 of P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4) and N.J.A.C. 19:30-3; and

8. Each worker employed to perform construction work or building services work at the qualified business facility shall be paid not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of the Department of Labor and Workforce Development pursuant to P.L. 1963, c. 150 (N.J.S.A. 34:11-56.25 et seq.) and P.L. 2005, c. 379 (N.J.S.A. 34:11-56.58 et seq.).

i. The payment of prevailing wage pursuant to this paragraph shall not apply if:

(1) The work performed under the contract is performed at a qualified business facility owned by a landlord that is not a business receiving Authority assistance;

(2) The landlord is a party to the construction contract, [or] building services contract, **or both**; and

(3) The qualified business facility constitutes a lease of less than 35 percent of the entire facility at the time of contract and under any agreement to subsequently lease the qualified business facility.

ii. In accordance with section 1 of P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.1), nothing in this paragraph shall be construed as requiring the payment of prevailing wage for construction commencing more than two years after the Authority has issued the first certificate of compliance pursuant to paragraph [(8)] **(2)** of subsection a. of section [71] **77** of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.10(d).

iii. The payment of prevailing wages for building services work shall apply for the duration of the commitment period.

(c) The minimum capital investment required to be eligible pursuant to (b)1 above shall be the sum of (c)1 through 5 below, as applicable, provided that to the extent a business's qualified business is comprised of more than one of the uses at (c)1, 2, 3, or 4 below, the minimum investment for common areas will be in proportion to the other areas. [If a business qualifies on the basis of retained full-time jobs, the new construction or rehabilitation, improvement, fit-out, or retrofit of an existing portion of the premises by the business qualifying on the basis of

retained full-time jobs shall be equal in size to no less than the space occupied by the business's retained full-time jobs at the time of application.]

1. For the rehabilitation, improvement, fit-out, or retrofit of an existing industrial, warehousing, logistics, or research and development portion of the premises for continued similar use by the business, a minimum investment of \$20.00 per square foot of gross leasable area;

2. For the new construction of an industrial, warehousing, logistics, or research and development portion of the premises for use by the business, a minimum investment of \$60.00 per square foot of gross leasable area;

3. For the rehabilitation, improvement, fit-out, or retrofit of an existing portion of the premises that does not qualify pursuant to (c)1 or 2 above, a minimum investment of \$40.00 per square foot of gross leasable area;

4. For the new construction of a portion of the premises that does not qualify pursuant to (c)1 or 2 above, a minimum investment of \$120.00 per square foot of gross leasable area;

5. For a small business, no new minimum capital investment shall be required, provided the applicant has demonstrated evidence satisfactory to the Authority of its intent to remain in the State for the commitment period. Such evidence may include, but is not limited to, a proposed lease, membership agreement, or similar commitment for space; and

6. In the event the business invests less than the amount set forth at (c)1 above in the qualified business facility, the business shall donate the uninvested balance to the infrastructure fund established pursuant to section 79 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.18, which donation shall not be included in the net positive economic benefit analysis pursuant to (b)4 above or the full economic analysis pursuant to N.J.A.C. 19:31-22.7(d).

(d) The minimum number of new or retained full-time jobs required to be eligible pursuant to (b)2 above shall be as set forth at (d)1 through 5 below. A business may be eligible for a tax credit award for both new and retained full-time jobs if the business separately satisfies the corresponding minimum number for new and retained full-time jobs.

1. For a small business, 25 percent growth of its workforce with new full-time jobs within the eligibility period. The small business shall submit a growth plan, which specifies the number of new full-time employees that the eligible business will hire each year of the eligibility period [at, or associated with, the qualified business facility;] **in the State** provided that by the end of the eligibility period, the eligible business shall have a minimum of 25 percent growth of its workforce with new full-time jobs;

2. For a business engaged primarily in a targeted industry that does not qualify as a small business, 25 new full-time jobs;

3. For any business not set forth at (d)1 or 2 above, a minimum of 35 new full-time jobs;

4. For a business eligible for new full-time jobs under (d)2 or 3 above, the business shall also be eligible for retained full-time jobs in addition to the new full-time jobs if the business will retain: 150 retained full-time jobs when locating in a government-restricted municipality; 250 retained full-time jobs when locating in a qualified incentive tract or enhanced area municipality; or 500 retained full-time jobs when locating anywhere else in the State;

[4.] **5. For a business not eligible under (d)2, 3 or 4 above, which is locating in a qualified incentive tract, enhanced area, or government-restricted municipality, the greater of 500 [new] retained full-time jobs or the business's retained full-time jobs at the time of application; and**

[5.] **6. For any business not set forth at (d)[4]5 above, the greater of 1,000 [new] retained full-time jobs or the business's retained full-time jobs at the time of application.**

(e) In addition to the requirements at (b), (c), or (d) above, a business shall provide **and adhere to** the following. The requirements set forth in this subsection may be modified by the Authority to respond to an emergency, disaster, or other factors that result in employees of an eligible business having to work from a location other than the qualified business facility:

1. A plan that demonstrates that the qualified business facility is capable of accommodating more than half of the business's new [or] **and** retained full-time employees as approved, as determined by the Authority in its sole discretion by considering square footage allocable to eligible positions. The business shall adhere to such plan to complete its project. [If a business is approved for retained full-time jobs, the business shall also satisfy the space requirements at (c)4 and 5 above if a business is receiving tax credits for any retained full-time jobs.]

2. A certification by the [authorized agent of the owner] **chief executive officer** of the business **or an equivalent officer**, under the penalty of perjury, that not less than 80 percent of the withholdings of new [or] **and** retained full-time jobs are, and will be, subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq.

(f) The [owner] **chief executive officer** of the business, or an [authorized agent of the owner] **equivalent officer**, shall certify that all factual representations made by the business to the Authority pursuant to (b), (c), and (d) above are true under the penalty of perjury.

(g) For a qualified business facility that is a complex of buildings:

1. The minimum capital investment required pursuant to (b) above and for purposes of qualifying as a mega project shall be aggregated only for buildings that are proximate, as determined by the Authority in its sole discretion. In all other instances, each building in a complex shall meet a minimum capital investment required pursuant to (b) above. Proximate buildings shall include, but not be limited to, buildings that are adjacent to each other or across a single public right-of-way from each other. The following are examples of complexes of buildings that are proximate:

i. A complex of buildings consists of building A and building B, which are both on the same block, but separated by other buildings.

ii. A complex of buildings will consist of building A and building B, which will be adjacent to each other, but have separate entrances.

iii. A complex of buildings consists of building A and building B, which are located in an industrial park and are separated solely by a parking lot.

2. The minimum number of new or retained full-time jobs may be met in the aggregate in a complex of buildings.

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

1. Having a capital investment in excess of \$50,000,000, at which more than 250 full-time employees of a business are created or retained; and

2. Demonstrating to the satisfaction of the Authority a combination of two or more of the following as a result of the project:

i. Positive financial benefit to the Tourism District;

ii. A net increase in visitors to the Tourism District;

iii. An increase in marketing dollars spent on the Tourism District; or

iv. The addition of unique amenities or services to the Tourism District, which amenities or services may be located at the project.

(i) A business shall be treated as the owner of a qualified business facility if it holds fee simple title to the facility, whether it ground leases the land underlying the facility for at least 50 years or holds title to the land underlying the facility.

(j) A business may apply for tax credits under the program for more than one project through one or more applications. However, the Authority may, in its sole discretion, consider two or more applications as one application for one project based on factors including, but not limited to, the location of the qualified business facilities, the types of jobs proposed, and the business's financing and operational plans.

19:31-22.4 Restrictions

(a) The Authority shall not enter into [an incentive] **a commitment** agreement with a business that has previously received incentives administered by the Authority unless the capital investment incurred and new or retained full-time jobs pledged by the business in the new

[incentive] **commitment** agreement are separate and apart from any capital investment or jobs underlying the previous award of incentives.

(b) A project that consists solely of final point-of-sale retail facilities shall not be eligible for a grant of tax credits. If a project consists of both final point-of-sale retail facilities and non-retail facilities, only the portion of the project consisting of non-retail facilities shall be eligible for a grant of tax credits. If a warehouse facility is part of a final point-of-sale retail facility and supplies only that facility, the warehouse facility shall not be eligible for a grant of tax credits. For the purposes of this subsection, a tourism destination project in the Atlantic City Tourism District as established pursuant to section 5 of P.L. 2011, c. 18 (N.J.S.A. 5:12-219), shall not be considered final point-of-sale retail facility.

(c) For the purposes of the certifications and annual reports required pursuant to the commitment agreement and set forth at N.J.A.C. 19:31-22.9(f) and 22.10(a)5, if a business has received an award for both new and retained full-time jobs, the business shall meet the employment requirements related to the retained full-time jobs before receiving benefits for new full-time jobs.

1. To the extent an eligible retained full-time job that was the basis of the award no longer exists, the business shall include as a retained full-time job, a new eligible position that is filled by a full-time employee, provided that the position is included in the order of date of hire and is not the basis for any other incentive award.

2. If a qualified business facility comprises a complex of buildings with different factors affecting the tax credit calculation, the business shall meet the employment requirements related to the retained full-time jobs at, or associated with, each building before receiving benefits for new full-time jobs at, or associated with, any building. The business shall include as a retained full-time job, a new eligible position that is filled by a full-time employee, regardless of the location of such position, provided that the position is included in the order of date of hire and is not the basis for any other incentive award, and shall be paid at the lower of the tax credit for the new eligible position filled by a full-time employee or the tax credit for the retained full-time job that no longer exists.

(d) A business with full-time employees that are the subject of an existing incentive award shall have to maintain 100 percent of the full-time employees subject of the existing incentive award before any full-time employee may be counted as an eligible position.

(e) To remain a mega project, the business shall maintain at least 500 new full-time jobs and demonstrate the factors approved for leadership each year during the commitment period.

19:31-22.5 Application submission requirements

(a) Each application to the Authority made by a business shall include the following information in an application format prescribed by the Authority:

1. Information on the business, including all affiliates contributing either full-time employees or capital investment or both to the project, which shall include the following:

i. The name of the business;

ii. The contact information of the person identified as the primary contact for the business;

iii. The prospective future address of the business (if different);

iv. The type of the business;

v. The principal products and services and three-digit North American Industry Classification System number;

vi. The New Jersey tax identification number;

vii. The Federal tax identification number;

viii. The total number of full-time employees in New Jersey on the date of the application and in the business's last tax period prior to the date of the application. If the application is approved in the business's subsequent tax period, the business must provide the total number of full-time employees in New Jersey in the tax period prior to credit amount approval;

ix. The total list of the business's locations in New Jersey and the function performed at each location;

x. A list of all of the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury permits and approvals or obligations and responsibilities, with which the owner or business is associated with, or has an interest in. The list shall identify the entity that applied for or received such permits and approvals or have such obligations and responsibilities, such as by program interest numbers or licensing numbers. The business shall also submit a written certification by the [owner] **chief executive officer** of the eligible business or [authorized agent of the owner] **an equivalent officer** stating that the business applying for the program satisfies the criteria at N.J.A.C. 19:31-22.7(c)1 to be in substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury[.]; **that contractors or subcontractors that will perform work at the qualified business facility are registered as required by "The Public Works Contractor Registration Act," P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.), have not been debarred by Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury, and that he or she has reviewed the application information submitted and that the representations contained therein are accurate;**

xi. A completed legal questionnaire disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;

xii. Submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101;

xiii. A list of all the development subsidies, as defined at P.L. 2007, c. 200, that the applicant is requesting or receiving, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received; and

xiv. Any other necessary and relevant information as determined by the Authority for a specific application; and

2. Project information, which shall include the following:

i. An overall description of the proposed project;

ii. A description of the capital investments planned by the business at the proposed qualified business facility;

iii. The estimated value of the capital investment and financial information demonstrating ability to complete the capital investment; and

iv. Evidence that the State's financial support of the proposed capital investment in a qualified business facility will yield a net positive economic benefit pursuant to N.J.A.C. 19:31-22.3(b)5, taking into account the criteria listed at N.J.A.C. 19:31-22.3(b)5i through v, and a statement that the applicant understands and acknowledges it may be required to submit any other information required by the Authority to conduct an analysis of the economic impact of the project;

(1) In relation to whether a proposed capital investment will yield a net positive economic benefit, the business shall submit a certification by the business's [owner] **chief executive officer** or [authorized agent of the owner] **an equivalent officer** stating:

(A) That the existing full-time jobs are at risk of leaving the State or being eliminated, if the business has any such full-time jobs;

(B) The tax credits are a material factor in any projected creation or retention, as applicable, of new full-time jobs; and

(C) All documents and all factual representations made by the business to the Authority in support of and to demonstrate that the award of tax credits will yield a net positive benefit to the State are true and accurate at the time of submission, under the penalty of perjury;

v. A description of how the minimum environmental and sustainability standards are to be incorporated into the proposed project;

vi. Identification of the site or sites of the proposed qualified business facility, including the block and lot of the site or sites as indicated upon the local tax map. For purposes of determining

geographical location of a building or contiguous buildings that extend over more than one geographical location, the building or contiguous buildings shall be considered in the geographical location in which the building or contiguous buildings are located with the most beneficial total tax credit amount;

vii. A project schedule that identifies projected move dates for the proposed qualified business facility;

viii. A schedule of short-term and long-term employment projections of the business in the State taking into account the proposed project;

ix. The terms of any lease agreements (including, but not limited to, information showing net leasable area by the business if a tenant and total net leasable area; or if the business is an owner, information showing net leasable area not leased to tenants, and total net leasable area) and/or details of the purchase or building of the proposed project facility; and a full economic analysis of all locations under consideration by the business, as well as all lease agreements, ownership documents, or substantially similar documentation for the business' [current] **proposed** in-State locations and all lease agreements, ownership documents, or substantially similar documentation for the potential out-of-State location alternatives, to the extent they exist;

x. The identification of key factors that are influencing the business's decision to either move to, or stay in, the State, or locate out-of-State, weighted to reflect importance to the business;

xi. A narrative description of the business's rationale to move to, or stay in, the State, or locate out-of-State and any other issues driving the applicant's decisions;

xii. Competitive proposals that the eligible business has received from other states;

xiii. The total number of anticipated new and retained full-time jobs in New Jersey and the total number of full-time employees that would occupy the qualified business facility, and the distribution of such totals identified by business entity if any such jobs and employees will be provided by affiliates;

xiv. For a small business, the growth plan required pursuant to N.J.A.C. 19:31-22.3(d)1; and

xv. Any other necessary and relevant information as determined by the Authority for a specific application; and

3. Employee information, which shall include the following:

i. [A written certification by the owner of the eligible business, or an authorized agent of the owner that the eligible positions that are the subject of the application will be at, or associated with, the qualified business facility, and evidence] **Evidence** to the Authority's satisfaction that demonstrates that 80 percent of each eligible position's work time will be performed in this State;

ii. The average annual wage and benefit rates of full-time employees and new and retained full-time jobs [at, or associated with, the qualified business facility] **in the State**; and

iii. Evidence that the applicant has provided the application information required by the State Treasurer for a development subsidy, such as the tax credits, pursuant to P.L. 2007, c. 200; and

4. Any other necessary and relevant information as determined by the Authority for a specific application, including, but not limited to:

i. A list of current employees and retained full-time employees [at, or associated with, the qualified business facility] **in the State**;

ii. The WR 30 of the business for the privilege period prior to application;

iii. A list of affiliates that will be contributing to the capital investment or full-time employees to the project;

iv. All locations in this State of the business and affiliates that will be contributing to the capital investment or full-time employees to the project;

v. The Statewide work force for the privilege period prior to application;

vi. A floor plan of the proposed qualified business facility that identifies the location of and square footage associated with the functions of the eligible positions at the proposed qualified business facility; and

vii. A list of all affiliates that are directly or indirectly controlled by the business, and the total number of full-time employees in New Jersey of each affiliate at the time of application and in the business's last tax period prior to the date of the application. If the application is approved in the business's subsequent tax period, the business must provide the total number of full-time employees in New Jersey of all affiliates in the tax period prior to credit amount approval.

(b) The business applying to the program shall submit an application fee as set forth at N.J.A.C. 19:31-22.6.

(c) The Authority may require the submission of additional information to complete the application or may require the resubmission of the entire application, if incomplete. In order to be complete, the application shall identify the proposed project site and demonstrate financial and organizational ability to undertake the proposed project through evidence of available capital sufficient to complete the project.

(d) If circumstances require an eligible business to amend its application to the Authority or to provide additional or supplemental factual representations prior to approval, then the [owner] **chief executive officer** of the eligible business, or an [authorized agent of the owner] **equivalent officer**, shall certify to the Authority that the information provided in its amended application

and any other factual representations made in support of and to demonstrate the eligibility requirements at N.J.A.C. 19:31-22.3(b), (c), (d), and (e) are true under the penalty of perjury.

19:31-22.6 Fees

(a) A business applying for benefits under this program shall submit a one-time non-refundable application fee. The application fee shall be as follows:

1. For projects with 99 or fewer new and retained full-time jobs, the fee to be charged at application shall be \$5,000;
2. For projects with 100 to 249 new and retained full-time jobs, the fee to be charged at application shall be \$10,000; [and]
3. For projects with 250 or more new and retained full-time jobs, **but not considered a mega project**, the fee to be charged at application shall be \$15,000[.]; **and**
- 4. For applicants that are seeking a mega project, the fee to be charged at application shall be \$25,000.**

(b) A business shall pay to the Authority the full amount of direct costs of due diligence, including, but not limited to, debarment/disqualification reviews, or other analyses by a third party retained by the Authority, if the Authority deems such retention to be necessary.

(c) A non-refundable fee shall be charged prior to the approval of the tax credit by the Authority as follows, except that the fee shall be refunded if the Authority does not approve the tax credit:

1. For each project with 99 or fewer new and retained full-time jobs, the fee shall be \$10,000;
2. For each project with 100 to 249 new and retained full-time jobs, the fee shall be \$75,000; [and]
3. For each project with 250 or more new and retained full-time jobs, **but not considered a mega project**, the fee shall be \$165,000[.]; **and**
- 4. For each project under a mega project, the fee shall be \$250,000.**

(d) A business shall pay to the Authority a non-refundable fee prior to the receipt of the tax credit certificate, as follows:

1. For each project with 99 or fewer new and retained full-time jobs, the fee shall be \$10,000;
2. For each project with 100 to 249 new and retained full-time jobs, the fee shall be \$100,000; [and]

3. For each project with 250 or more new and retained full-time jobs, **but not considered a mega project**, the fee shall be \$200,000[.]; **and**

4. For each project under a mega project, the fee shall be \$300,000.

(e) A business shall pay to the Authority an annual servicing fee, beginning with the tax accounting or privilege period in which the Authority accepts the certification that the business has met the capital investment, employment, and other eligibility requirements of the program for the respective project, or the respective project phase, pursuant to N.J.A.C. 19:31-22.9(f), and for the duration of the commitment period and any period of extended commitment pursuant to N.J.A.C. 19:31-22.3(b)5iv. The annual servicing fee shall be paid to the Authority by the business at the time the business submits its annual report, as follows:

1. For each project with 99 or fewer new and retained full-time jobs, the annual servicing fee shall be \$5,000;

2. For each project with 100 to 249 new and retained full-time jobs, the annual servicing fee shall be \$25,000; [and]

3. For each project with 250 or more new and retained full-time jobs, **but not considered a mega project**, the annual servicing fee shall be \$60,000[.]; **and**

4. For each project under a mega project, the annual servicing fee shall be \$90,000.

(f) A business applying for a tax credit transfer certificate pursuant to N.J.A.C. 19:31-22.12 or permission to pledge a tax credit transfer certificate purchase contract as collateral shall pay to the Authority a fee, as follows:

1. For each project with 99 or fewer new and retained full-time jobs, the fee shall be \$5,000, and \$2,500 for each additional request made annually;

2. For each project with 100 to 249 new and retained full-time jobs, the fee shall be \$10,000, and \$5,000 for each additional request made annually; [and]

3. For each project with 250 or more new and retained full-time jobs, **but not considered a mega project**, the fee shall be \$15,000, and \$7,500 for each additional request made annually[.]; **and**

4. For each project considered a mega project, the fee shall be \$20,000, and \$10,000 for each additional request made annually.

(g) A business shall pay, to the Authority, a non-refundable fee for each request for any administrative changes, additions, or modifications to the tax credit; and, a non-refundable fee shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval, as follows:

1. For each project with 99 or fewer new and retained full-time jobs, a non-refundable fee of \$2,500 shall be paid for each request for any administrative change, addition, or modification to the tax credit; and a non-refundable fee of \$7,500 shall be paid for any major change, addition, or modification to the tax credit, such as those requiring extensive staff time and Board approval;

2. For each project with 100 to 249 new and retained full-time jobs, a non-refundable fee of \$5,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$15,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval; and

3. For each project with 250 or more new and retained full-time jobs, **but not considered a mega project**, a non-refundable fee of \$7,500 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$25,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval[.]; **and**

4. For each project considered a mega project, a non-refundable fee of \$10,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$35,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval.

(h) A non-refundable fee shall be paid for the first six-month extension to the date by which the business shall submit the certification with respect to the capital investment, employment, and other eligibility requirements of the program for the respective project, or the respective project phase, pursuant to N.J.A.C. 19:31-22.9(f); and a non-refundable fee shall be paid for each subsequent extension, as follows:

1. For each project with 99 or fewer new and retained full-time jobs, the fee for the first six-month extension shall be \$5,000, and \$7,500 for each subsequent extension;

2. For each project with 100 to 249 new and full-time retained jobs, the fee shall be \$10,000 for the first six-month extension and \$15,000 for each subsequent extension; [and]

3. For each project with 250 or more new and retained full-time jobs, **but not considered a mega project**, the fee shall be \$15,000 for the first six-month extension and \$25,000 for each subsequent extension[.]; **and**

4. For each project considered a mega project, the fee shall be \$20,000 for the first six-month extension and \$30,000 for each subsequent extension.

(i) A business seeking to terminate an existing [incentive] **commitment** agreement in order to participate in an [incentive] **commitment** agreement authorized pursuant to the Emerge program shall pay, to the Authority, a non-refundable fee as follows:

1. For each project with 99 or fewer new and retained full-time jobs, the fee for a termination that does not require extensive staff time and Board approval shall be \$2,500, and \$7,500 for each termination that requires extensive staff time and Board approval;

2. For each project with 100 to 249 new and retained full-time jobs, the fee for a termination that does not require extensive staff time and Board approval shall be \$5,000, and \$15,000 for each termination that requires extensive staff time and Board approval; [and]

3. For each project with 250 or more new and retained full-time jobs, **but not considered a mega project**, the fee for a termination that does not require extensive staff time and Board approval shall be \$7,500, and \$25,000 for each termination that requires extensive staff time and Board approval[.]; **and**

4. For each project, considered a mega project, the fee for a termination that does not require extensive staff time and Board approval shall be \$10,000, and \$35,000 for each termination that requires extensive staff time and Board approval.

19:31-22.7 Review of completed application

(a) A business seeking an approval of tax credits for a project shall apply for tax credits prior to March 1, 2027.

(b) The Authority shall conduct a review of the applications commencing with the completed application bearing the earliest submission date or if interest in the program so warrants, at the Authority's discretion, and upon notice, the Authority may institute a competitive application process whereby all completed applications submitted by a date certain will be evaluated as if submitted on that date. The review will determine whether the applicant:

1. Complies with the eligibility criteria;
2. Satisfies the submission requirements; and
3. Provides adequate information for the subject application.

(c) Before the Board may consider an eligible business's application for tax credits:

1. The Authority [will] **shall** confirm with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury that the eligible business is in [compliance by being in] substantial good standing with the statutes, rules, and other enforceable standards of the respective department, or, if a compliance issue exists, the eligible business has entered into an agreement with the respective department that includes a practical corrective action plan, as applicable.

i. Substantial good standing shall be determined by each department and mean, at a minimum, that the eligible business:

(1) As to the Department of Labor and Workforce Development and the Department of Environmental Protection:

(A) Is in substantial compliance with all material statutes, rules, and other enforceable standards of the respective department that apply to the eligible business; and

(B) Has no material violations of those statutes, rules, or other enforceable standards that remain substantially unresolved through entry into a corrective action plan, or other agreement with the department, with respect thereto; and

(2) As to all other departments, has no unpaid liability in excess of any threshold dollar amount(s) that may be established by each respective department.

ii. If the Department of Labor and Workforce Development, the Department of Environmental Protection, or the Department of the Treasury promulgates, or issues, its own more stringent rule or standard defining the term “substantial good standing,” the respective department shall use such rule or standard to determine whether a business is in substantial good standing.

2. The Authority may contract with an independent third party to perform a background check on the eligible business.

3. The eligible business shall execute a non-binding letter of intent with the Chief Executive Officer of the Authority, specifying the amount and terms and conditions of tax credits that the Authority is prepared to propose for Board approval and that are intended to be a material factor in the decision by the eligible business to create or retain the proposed number of new and retained full-time jobs, and in which the eligible business certifies such tax credits are a material factor in its decision.

i. If the eligible business has taken actions to commit to the project in this State, including, but not limited to, obtained site control of the qualified business facility; signed lease without penalty-free contingency language that the lease is conditioned upon receiving the tax credits; has expended physical construction costs for a building or other structure; has taken a formal decision that selects a site; made a public announcement that it intends to locate to the State; entered into any binding contract for relocation or equipment, including, but not limited to, moving furniture, fixtures, and equipment purchases; or made non-refundable deposits prior to the execution of the letter of intent, then the Authority may rescind approval of the award of tax credits, unless the eligible business disclosed these facts prior to executing the letter of intent and the Authority determines that the award of tax credits was still a material factor in the eligible business’s decision to create or retain the minimum number of new and retained full-time jobs for eligibility under the program.

ii. The letter of intent will also include a certification from the [owner] **chief executive officer** of the eligible business, or an [authorized agent of the owner] **equivalent officer** that all factual representations made by the business to the Authority since the submission of the application are true under the penalty of perjury.

iii. The Authority may make the non-binding letter of intent public, unless the Authority determines that the interests of the State require confidentiality.

(d) In determining whether the award of tax credits is a material factor in the eligible business's decision to create or retain the minimum number of new and retained full-time jobs for eligibility under the program, the Authority shall undertake a full economic analysis of all locations under consideration by the eligible business. The Chief Executive Officer of the Authority may further consider the costs associated with opening and maintaining a business in New Jersey, competitive proposals that the eligible business has received from other states, the prevailing economic conditions, and any other factors that the Chief Executive Officer of the Authority deems relevant to assist the Authority in determining whether an award of tax credits is a material factor in the eligible business's decision. Based on this information, the Authority shall independently verify and confirm the eligible business's assertion that the award of tax credits under the program is a material factor in the eligible business's decision to create or retain the minimum number of new and retained full-time jobs for eligibility under the program and, in the case of retained full-time jobs, the jobs are actually at risk of leaving the State, before the Authority may award the eligible business any tax credits under this program.

(e) In determining whether the company meets the net positive economic benefits test pursuant to N.J.A.C. 19:31-22.3(b)5 and as certified by the business's [owner] **chief executive officer**, or [authorized agent of the owner] **an equivalent officer**, pursuant to N.J.A.C. 19:31-22.5(a)2iv, the Authority's consideration shall include, but not be limited to, the direct and indirect benefits to the State, including local taxes that may benefit the State, and may include induced benefits derived from construction, provided that such determination shall be limited to the net positive economic benefits derived from the capital investment commenced after the submission of an application to the Authority.

(f) In making the determination of the local property tax included in the net positive economic benefit required pursuant to (e) above, the Authority may consider local property tax from new construction and shall not consider the value of any taxes exempted, abated, rebated, or retained under the Five-Year Exemption and Abatement Law, P.L. 1991, c. 441 (N.J.S.A. 40A:21-1 et seq.), the Long Term Tax Exemption Law, P.L. 1991, c. 431 (N.J.S.A. 40A:20-1 et seq.), the New Jersey Urban Enterprise Zones Act, P.L. 1983, c. 303 (N.J.S.A. 52:27H-60 et seq.), or any other law that has the effect of lowering or eliminating the business's State or local tax liability.

(g) Upon completion of the review of an application pursuant to (b) through (f) above, and receipt of a recommendation from Authority staff on the application, the Board shall determine whether or not to approve the application and the maximum amount of tax credits to be granted. The Authority shall promptly notify the applicant and the Director of the Division of Taxation of the determination. The Board's award of the credits will be subject to conditions subsequent and pursuant to N.J.A.C. 19:31-22.9(a).

19:31-22.8 Determination of grant amount; bonus award

(a) The total amount of the tax credit for an eligible business for each new or retained full-time job shall be as set forth in this section. The total tax credit amount shall be calculated and credited to the business annually for each year of the eligibility period. Unless the business demonstrates to the Authority's satisfaction that a new or retained full-time job is primarily working at the qualified business facility, the tax credit for the full-time job shall be calculated with the base amount for a qualified business facility in other eligible areas and shall not include the bonuses at (d)1, 2, 6, 7, 9, 13, 15, 16, and 17 below.

(b) For a project that has a complex of buildings, the total amount of tax credit shall be calculated by combining the jobs in buildings that have the same factors set forth in this section that affect the tax credit calculation. Subject to N.J.A.C. 19:31-22.4(c) and (d), the total amount of tax credit shall be calculated separately for jobs in a building with factors that are different than the factors affecting the calculation for jobs in the other buildings in a complex of buildings, including location of the buildings. Notwithstanding that the total tax credit for jobs in different buildings may be calculated separately, forfeitures pursuant to N.J.A.C. 19:31-22.14 and defaults and recaptures included in the commitment agreement pursuant to N.J.A.C. 19:31-22.9(b)6 shall be based on the aggregate capital investment and eligible full-time jobs.

(c) The base amount of the tax credit for each new or retained full-time job for an eligible business shall be as follows:

1. For a qualified business facility located within a government-restricted municipality, or that is a mega project, \$4,000 per year;
2. For a qualified business facility located within an enhanced area, \$3,500 per year;
3. For a qualified business facility located within a distressed municipality, \$3,000 per year;
4. For a project in a qualified opportunity zone or an employment and investment corridor, \$2,500 per year; and
5. For a project in other eligible areas, \$500.00 per year.

(d) In addition to the base amount of the tax credit, the amount of the tax credit to be awarded for each new or retained full-time job shall be increased with the following bonuses, except that the Authority shall not award a bonus to an eligible business with full-time jobs at the qualified business facility, whether the full-time job is subject to the tax credit award or not, that pays less than \$15.00 per hour or 120 percent of the minimum wage fixed under subsection a of section 5 of P.L. 1966, c. 113 (N.J.S.A. 34:11-56a4), whichever is higher:

1. For an eligible business with a qualified business facility located in a municipality with a Municipal Revitalization Index **distress** score greater than 50, an increase of \$1,000 per year;
2. For an eligible business with a qualified business facility that is an industrial or research and development premises for industrial or research and development use and at which the capital investment in the industrial or research and development portion of the premises is in

excess of the minimum capital investment required for eligibility for the entire qualified business facility pursuant to subsection b of section 71 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.3(c), an increase of [\$1,000] **\$500.00** per year for each additional amount of investment that exceeds the minimum amount required for eligibility by 40 percent, with a maximum increase of [\$3,000] **\$1,500** per year, unless the project qualifies as a mega project or the qualified business facility is located in a government-restricted municipality, in which case, the maximum increase is \$5,000 per year;

3. For an eligible business with large numbers of new full-time jobs during the [commitment] **eligibility** period, the increases shall be in accordance with the following schedule:

- i. If the number of new full-time jobs is between 251 and 400, \$500.00 per year;
- ii. If the number of new full-time jobs is between 401 and 600, \$750.00 per year;
- iii. If the number of new full-time jobs is between 601 and 800, [\$1000] **\$1,000** per year;
- iv. If the number of new full-time jobs is between 801 and 1,000, \$1,250 per year; and
- v. If the number of new full-time jobs is in excess of 1,000, \$1,500 per year;

4. For an eligible business that annually funds a training program specific to the business's industry, which has the capacity to enroll 10 percent or more of the eligible business's full-time workforce, or pays a State educational institution to provide to the public a training program specific to the business's industry, an increase of \$500.00 per year; provided, however, that if the training program is provided by a State educational institution that is within 10 miles of the qualified business facility, then the increase shall be \$1,000 per year;

5. For an eligible business that qualifies as a small business, an increase of \$500.00 per year;

6. For an eligible business with new full-time jobs and retained full-time jobs at the qualified business facility with a median salary in excess of the existing median salary for full-time workers residing in the county in which the project is located, or, in the case of a project in a government-restricted municipality, a business [that] **with** employees **in** full-time positions at the project with a median salary in excess of the median salary for full-time workers residing in the government-restricted municipality, an increase of [\$250.00] **\$200.00** per year for the new or retained full-time employees that are at the qualified business facility during the eligibility period for each 35 percent by which the project's median salary levels exceeds the county or government-restricted municipality median salary, with a maximum increase of [\$1,500] **\$1,000** per year;

[7. For an eligible business with a qualified business facility located in a qualified incentive tract, an increase of \$500.00 per year;]

[8.]7. For an eligible business engaged primarily in a targeted industry, an increase of \$500.00 per year;

[9.]**8.** For an eligible business with a qualified business facility located in a qualified incubator facility, an increase of \$500.00 per year;

[10.]**9.** For an eligible business that enters into a labor harmony agreement, an increase of \$2,000 per year that the portion of the project as represented by the new or retained full-time employees that are the subject of the labor harmony agreement is in effect; provided further that an eligible business receiving a bonus under this subparagraph may exceed the limitation applicable to the eligible business pursuant to (e) below by an amount not to exceed \$1,000;

[11.]**10.** For an eligible business that provides its employees access to child care either through an on-site quality child care facility free of charge to its employees or by offering employees a minimum of \$1,500 per employee per year in reimbursements, subsidies, or vouchers to be paid by the eligible business to its employees for the cost of child care in accordance with standards adopted by the Authority and made available on the Authority's website, an increase of \$1,000 per year;

[12.]**11.** For an eligible business that enters, **or has previously entered**, into an [agreement] **active partnership** with a [prisoner] re-entry program for the purpose of identifying and promoting employment opportunities at the eligible business for former inmates and current inmates leaving the corrections system, and that hires at least one active participant in the re-entry program **as a full-time employee**, an increase of \$500.00 per year;

[13.]**12.** For an eligible business with a qualified business facility that exceeds the Leadership in Energy and Environmental Design's "Silver" rating standards, but does not exceed "Gold" rating standards, or that completes substantial environmental remediation, an additional increase of \$250.00 per year, or for an eligible business with a qualified business facility that exceeds the Leadership in Energy and Environmental Design's "Gold" rating standards, an additional increase of \$500.00 per year;

[14.]**13.** For an eligible business in a targeted industry with a qualified business facility that is used by the eligible business to conduct a full-time collaborative research relationship with a college or university, including, but not limited to, a doctoral university, an increase of \$1,000 per year. The full-time collaborative research relationship must commence after approval of the application and must require at least 35 hours per week of collaborative activity, or any other standard of collaborative activity generally accepted by custom or practice as full-time, as determined by the Authority, and evidenced by an agreement at certification. To be eligible for this bonus, the agreement must remain in effect each year of the eligibility period;

[15.]**14.** For an eligible business with a project that generates solar, **geo-thermal, wind, or any other renewable or distributed** energy on site for use within the qualified business facility of an amount that equals at least 50 percent of the qualified business facility electric supply service needs, an increase of \$500.00 per year;

[16.]**15.** For an eligible business with a marine terminal project in a municipality located outside a government-restricted municipality, but within the geographical boundaries of the South Jersey Port District, an increase of \$1,500 per year;

[17.]**16.** For an eligible business with a qualified business facility located in a qualified opportunity zone, an increase of \$1,000 per year; and

[18.]**17.** For an eligible business if one-third or more of the members of the eligible business's governing board or other governing body self-identify as members of an underrepresented community, which shall be Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, Alaska Native, or lesbian, gay, bisexual, or transgender, an increase of \$2,000 per year **for each new or retained full-time job**. The Authority shall work with the State's Chief Diversity Officer or other State entities to ensure that the bonus provided under this paragraph is implemented faithfully and in compliance with the law.

(e) Except as provided at (d)10 above, the gross amount of the tax credit available to an eligible business for each new or retained full-time job shall be the sum of the base amount set forth at (c) above and the various additional bonus amounts for which the business is eligible pursuant to (d) above, subject to the following limitations:

1. For a mega project or a project in a government-restricted municipality, the gross amount for each new or retained full-time job shall not exceed \$8,000 per year;

2. For a qualified business facility located within an enhanced area, the gross amount for each new or retained full-time job shall not exceed \$6,000 per year;

3. For a qualified business facility within a distressed municipality, the gross amount for each new or retained full-time job shall not exceed \$5,000 per year;

4. For a qualified business facility in a qualified opportunity zone or an employment and investment corridor, the gross amount for each new or retained full-time job shall not exceed \$4,000 per year; and

5. For a qualified business facility in other eligible areas, the gross amount for each new or retained full-time job shall not exceed \$3,000 per year.

(f) The Authority shall reduce the gross amount of tax credits per full-time job if the median salary of new full-time jobs and retained full-time jobs [at, or associated with, the qualified business facility] **subject to the project agreement** is less than the existing median salary for full-time workers residing in the county in which the qualified business facility is located **or for a project located in a government-restricted municipality, if the median salary of new full-time jobs and retained full-time jobs subject to the project agreement is less than the existing median salary for the municipality in which the qualified business facility is located**. The Authority shall reduce the gross amount of tax credits per full-time job by an amount, in percentage points, equal to the percentage the median salary of new full-time jobs and

retained full-time jobs [at, or associated with, the qualified business facility] **subject to the project agreement** is below the existing median salary for full-time workers residing in the county **or government-restricted municipality** in which the qualified business facility is located. The Authority shall not award a tax credit to an eligible business if the median salary of new full-time jobs and retained full-time jobs [at, or associated with, the qualified business facility] **that would otherwise be subject to the project agreement** is 30 percent or more below the **relevant** existing median salary for full-time workers residing in the county **or government-restricted municipality** in which the qualified business facility is located.

(g) After the determination by the Authority of the gross amount of tax credits for which an eligible business is eligible pursuant to (e) and (f) above, the final total tax credit amount shall be calculated as follows: for each new full-time job, the eligible business shall be allowed tax credits equaling 100 percent of the gross amount of tax credits for each new full-time job; and for each retained full-time job, the eligible business shall be allowed tax credits equaling 50 percent of the gross amount of tax credits for each retained full-time job.

(h) Notwithstanding the provisions of (a) through (g) above to the contrary, for each application approved by the Board, the amount of tax credits available to be applied by the business annually shall not exceed an amount determined by the Authority to be necessary to induce the project to be sited in New Jersey, as determined by the Board. The Authority shall determine the amount necessary to complete the project through staff analysis of all locations under consideration by the eligible business and all lease agreements, ownership documents, or substantially similar documentation for the eligible business's [current] **proposed** in-State locations and potential out-of-State location alternatives, competitive proposals from other states, the prevailing economic conditions, and any other information that the Authority deems relevant, that may include, but is not limited to, public policy goals, the amount of space dedicated to eligible positions at the qualified business facility, net positive economic benefits, and leadership in targeted industries.

19:31-22.9 Approval letter and commitment agreement

(a) Following approval by the Board, but before the issuance of tax credits, the Authority shall require an eligible business to execute and return an approval letter to the Authority. The Board's award of the credits will be subject to conditions subsequently set forth in the approval letter. The conditions in the approval letter must be met in order to retain the approval of the tax credits prior to their issuance and receipt by the business pursuant to (i) below. Such conditions shall include, but not be limited to, the requirement to provide an estimated date of completion of the project; submission of periodic progress reports; submission of the information required by (a)2 below; the requirement that the project complies with the prevailing wage requirements at P.L. 2020, c. 156 and N.J.A.C. 19:31-22.3(b)8 and the Authority's affirmative action requirements pursuant to P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4) and N.J.A.C. 19:30-3; that the project does not violate any environmental law requirements, including, but not limited to, Flood Hazard Area Control Act Rules, N.J.A.C. 7:13; and that the business submit a plan to meet the minimum environmental and sustainability standards.

1. The approval letter shall state the period within which the business must provide to the Authority evidence that the conditions have been met.

2. Commencing with the date six months following the date the Authority and an eligible business execute the approval letter, the eligible business shall be required to demonstrate that it has obtained site plan approval for, as applicable, has committed financing for, as applicable, and has site control of, the qualified business facility in accordance with the time periods set forth in this paragraph, unless otherwise modified in the approval of the application by the Board.

i. Within the later of 12 months following the date of application approval by the Authority or six months following the date of execution of the approval letter, each approved business shall submit the information required at (a)2 above, except that a business shall have until the later of 24 months from the date of application approval or six months following the date of execution of the approval letter to submit such information.

ii. Absent extenuating circumstances or the Authority's determination in its sole discretion, the Authority's approval of the tax credits shall expire if the information required at (a)2 above is not received by the Authority within the required period of time.

(b) Upon satisfaction of the conditions in the approval letter, as determined by the Authority, the business shall execute a commitment agreement. The terms of the commitment agreement shall be consistent with the applicable eligibility requirements of section 71 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.3(b), (c), (d), and (e), and shall include, but shall not be limited to, the following:

1. A detailed description of the proposed project that will result in job creation or retention, and the number of new and retained full-time jobs that are approved for tax credits;

2. For a phased project, [an incentive] **a project** phase agreement which for each phase identifies a description of the phase, the expected capital investment and number of new full-time jobs, and the time following acceptance of the [incentive] **commitment** agreement when each phase is to begin and be completed, with the awarding of tax credits under the [incentive] **commitment** agreement to be predicated on the number of full-time jobs created through the fulfillment of each [incentive] **project** phase agreement;

3. The eligibility period of the tax credits or, for a phased project, the eligibility period of the tax credits for each phase;

4. An ongoing requirement to provide the Authority with current personnel information that will enable the Authority to administer the program;

5. A requirement that the eligible business maintain the project at, or associated with, a location in New Jersey for the commitment period, with at least the minimum number of full-time jobs, salaries, and withholdings as required by this program pursuant to N.J.A.C. 19:31-22.14(a), (b), and (c);

6. A provision to permit the Authority to recapture all or part of any tax credits awarded, at its discretion, if the eligible business does not remain in compliance with (a)5 above for the required term or significantly reduces the number of full-time employees, or the salaries or withholdings thereof, based on the amounts that result in forfeitures or reductions pursuant to N.J.A.C. 19:31-22.14(a), (b), and (c), to an amount less than the minimum jobs, salaries, or withholdings to which the eligible business certified at the commencement of the eligibility period, for two or more successive tax periods;

7. A method for the eligible business to certify that it has met the capital investment, employment, and other eligibility requirements of the program set forth at subsections b. and c. of section 71 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.3(b), (c), (d), and (e), and to report annually to the Authority the number of new and retained full-time employees, and the withholdings and salaries thereof, for which the tax credits are to be allowed;

8. Representations that the eligible business is in substantial good standing **with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury** or [meets the agreement requirements described at paragraph (1) of subsection b. of section 71 of P.L. 2020, c. 156 and N.J.A.C. 19:31-22.7(c)1] **has entered into an agreement with the departments that includes a practical corrective action plan**, and that the project complies with all applicable laws, and specifically, that the project does not violate any environmental law, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13;

9. A provision permitting an audit of the payroll records of the business and any other evidence and documentation supporting the certifications pursuant to (e) below, the annual reports pursuant to N.J.A.C. 19:31-22.10, and the addition of affiliates pursuant to N.J.A.C. 19:31-22.14(i) from time-to-time, as the Authority deems necessary;

10. A provision acknowledging the Authority's right to confirm with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury that the eligible business and each contractor and subcontractor performing work at the qualified business facility is in substantial good standing, as defined at N.J.A.C. 19:31-22.7(c), or has entered into an agreement with the respective department that includes a practical corrective action plan, as applicable; **and that each contractor or subcontractor performing work at the qualified business facility is registered as required by "The Public Works Contractor Registration Act," P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.), has not been debarred by Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and possesses a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury;**

11. A provision providing that if the eligible business is not in substantial good standing with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury and has not entered into an agreement with the respective department, as set forth at N.J.A.C. 19:31-22.7(c), and has been given written notice thereof, including opportunity to be heard or to contest the determination, by the respective department, then the [Authority] **eligible business** may [suspend] **forfeit** the issuance

of tax credits pending the resolution of the **underlying** violation(s) **or other issues** [or noncompliance, or if the violation(s) or noncompliance remain unresolved and the suspension continues for two years, then, at the Authority's sole option, the eligible business may forfeit the tax credit for those years];

12. A requirement for the eligible business to engage in on-site consultations prior to commencement of construction with the Division of Workplace Safety and Health in the Department of Health;

13. A provision permitting the Authority to amend the agreement;

14. A provision establishing the conditions under which the Authority, the eligible business, or both, may terminate the agreement;

15. For a small business, an attached schedule with the reduced amount of the award, if the business does not meet the projections in the growth plan;

16. Milestones for the project, which shall include the estimated date of commencement and completion of the project, and a provision that the Authority may rescind the award of tax credits if a project fails to advance in accordance with milestones in the commitment agreement or fails to provide progress reports required under the approval letter;

17. An agreement by the business that the statute of limitations for the collection and assessment of corporation business tax and insurance premiums tax will be extended to the period of the commitment duration;

18. Indemnification and insurance requirements;

19. Default and remedies, including, but not limited, to a default if an eligible business made a material misrepresentation on its application;

20. The schedule indicating the repayment of the incremental tax credits received by a business that elected a period of extended commitment pursuant to N.J.A.C. 19:31-22.3(b)5iv, if the business fails to maintain the project through the expiration of that extended commitment period; and

21. A provision requiring a community benefits agreement if the actual total project cost upon completion of the project equals or exceeds \$10 million.

(c) For a project whose total project cost equals or exceeds \$10 million, in addition to the commitment agreement, an eligible business shall execute a community benefits agreement or agreements pursuant to subsection b. of section 73 of P.L. 2020, c. 156, as prescribed below:

1. The business shall enter into a community benefits agreement with the Authority and the chief executive of the municipality or, if requested by the chief executive of the municipality, the chief executive of the county, in which the qualified business facility is located. If the

municipality requests the county to enter into the agreement, the chief executive of the municipality must submit to the Authority a signed letter notifying the EDA that the municipality has made the request. The Authority shall not participate in negotiations between the eligible business and the municipality or county; however, the Authority shall review the agreement prior to the execution of the agreement to determine compliance with the requirements of this subsection including, but not limited to, a provision for mediation as required pursuant to (d)4ii below. The agreement may include, but shall not be limited to, requirements for training, employment, and youth development and free services to underserved communities in, and around, the community in which the qualified business facility is located.

2. The community benefits agreement shall include a list of contributions by the business; the monetary equivalent for any non-monetary contribution; an event of default if the business forfeits tax credits pursuant to (c)7ii below in two successive years; and the date by when the community advisory committee must submit its annual report pursuant to (c)6 below.

3. The eligible business and the municipality or county shall have six months, with two three-month extensions, after Authority Board approval of the business's application, to enter into a community benefits agreement. The community benefits agreement is a condition to entering into a commitment agreement.

4. Prior to entering a community benefits agreement, the governing body of the municipality or, if the county is executing the agreement, the governing body of the county, in which the qualified business facility is located shall hold at least one public hearing subject to the Senator Byron M. Baer Open Public Meetings Act, at which, the chief executive or designee from the chief executive's department or office, shall hear testimony from residents, community groups, and other stakeholders on the needs of the community that the agreement should address. The chief executive shall provide a record, including hearing minutes, satisfactory to the Authority, which shall be an exhibit to the community benefits agreement.

5. The community benefits agreement shall provide for the creation of a community advisory committee to oversee the implementation of the agreement, monitor successes, and ensure compliance with the terms of the agreement, as follows:

i. The community advisory committee created pursuant to this paragraph shall be comprised of representatives from community groups and residents of the municipality or, if the county is executing the agreement, community groups and residents of the county in which the qualified business facility is located.

ii. The chief executive of the municipality or, if the county is executing the agreement, the chief executive of the county shall appoint the members of the community advisory committee, which shall consist of not less than three members.

iii. For new construction or substantial rehabilitation projects, the community advisory committee shall have at least one representative from the business community in the zip code in which the qualified business facility is located, at least one representative from a community group, and at least one resident from the zip code in which the qualified business facility is

located. There shall be no more than one municipal or county employee on the community advisory committee.

iv. For all other projects, the community advisory committee shall be determined by the chief executive of the municipality, or if the county is executing the agreement, the chief executive of the county, without regard to the criteria listed at (c)5iii above.

v. Community advisory committee members shall be required to sign a letter certifying that they have no financial or other interested relationship with the eligible business. The certifications shall be submitted to the Authority by the business or the municipality, or if the county is executing the agreement, the county.

vi. Any report or action shall be approved by a majority of the members of the community advisory committee.

6. The community advisory committee shall produce an annual report, including an evaluation of whether the eligible business is in compliance with the terms of the community benefits agreement:

i. If the report from the community advisory committee and the certification from the eligible business pursuant to N.J.A.C. 19:31-22.10(a)[5]3 both indicate that the eligible business is in compliance with the community benefits agreement, then the eligible business shall be in compliance with the community benefits agreement. Absent extenuating circumstances and the written approval of the Authority, if the community advisory committee does not timely submit the annual report, then the determination of compliance of the eligible business shall be based on the certification from the eligible business pursuant to N.J.A.C. 19:31-22.10(a)[5]3.

ii. If the report from the community advisory committee indicates that the eligible business is not in compliance with the terms of the community benefits agreement, the Authority shall serve as, or identify, a mediator. The community advisory committee, municipality, or county, as applicable, and the eligible business shall enter into non-binding mediation to seek resolution or mutually agreeable amendments to the community benefits agreement within 60 days of the notice from the Authority of the person who will serve as a mediator. Thereafter, the results of the mediation shall be reported to the Authority.

iii. If a resolution is not able to be achieved through mediation, a hearing officer will be assigned by the Authority. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. Following completion of the record review and in-person hearing, as applicable, the hearing officer shall issue a written report to the Chief Executive Officer containing his or her finding(s) and recommendation(s). The hearing officer's report shall be advisory in nature. The business, municipality, or county, and the community advisory committee shall receive a copy of the written report of the hearing officer and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report. The Chief Executive Officer shall consider the hearing officer's report and any timely submitted written comments

and exceptions. Based on that review, the Chief Executive Officer shall make a determination of compliance or non-compliance. The process described in this subsection is not a contested case subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

7. If the business is not in compliance as determined pursuant to (c)6 above, the following apply:

i. The amount of tax credits that the business may apply in the relevant tax period shall be reduced by 120 percent of the sum of the monetary values of the contributions for which the business is not in compliance if the Authority determines that:

(1) Compliance with the specific contribution is delayed due to unforeseeable acts related to the project beyond the eligible business's control and without its fault or negligence;

(2) The eligible business is using best efforts, with all due diligence, to proceed with the completion of the contribution; and

(3) The eligible business has made all reasonable efforts to prevent, avoid, mitigate, and overcome the noncompliance; and

ii. For any other noncompliance, the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating compliance has been reviewed and approved by the Authority, for which tax period and each subsequent tax period the full amount of the credit shall be allowed.

8. An eligible business shall not be required to enter into a community benefits agreement pursuant to this subsection if the eligible business submits to the Authority a copy of the eligible business's [redevelopment agreement and] **approval letter from the Authority or a redevelopment agreement applicable to the qualified business facility, provided that the approval letter or redevelopment agreement [that] is certified by the chief executive of the municipality in which the project is located and includes provisions that meet or exceed the standards required for a community benefits agreement in this subsection, as determined by the Chief Executive Officer pursuant to rules adopted by the Authority.**

(d) Upon completion of the capital investment and employment requirements of the program, an eligible business shall submit to the Authority certifications evidencing that the eligible business has satisfied the conditions of the program and the project agreement relating to the capital investment, employment, and other eligibility requirements, including, but not limited to, withholdings. If applicable, the certifications shall evidence that the eligible business has satisfied the requirements related to a mega project. The business must submit supporting evidence satisfactory to the Authority. Absent extenuating circumstances and the written approval of the Authority, the eligible business shall submit the certifications as described at (h) below within three years following the date of approval of the application. The Authority may grant two six-month extensions of the deadline. However, the date of [completion] **certification** shall not occur later than four years following the date of approval of the application. The

Authority may grant one additional extension of no more than one year, taking the date of completion to five years past the date of approval of the application, but only if:

1. The Authority finds that:

i. The project is delayed due to unforeseeable acts related to the project beyond the eligible business's control and without its fault or negligence;

ii. The eligible business is using best efforts, with all due diligence, to proceed with the completion of the project and the submission of the certification; and

iii. The eligible business has made, and continues to make, all reasonable efforts to prevent, avoid, mitigate, and overcome the delay; and

2. The eligible business provides timely notice to the Authority of the delay within 30 days after the eligible business has actual or constructive knowledge of the delay, and shall provide periodic reports, not less than every 30 days, of the status of the delay and the steps the eligible business is taking to mitigate or overcome the delay.

(e) In addition to the extensions at (d) above, if the Governor declares an emergency, then the Chief Executive Officer of the Authority shall have the discretion to grant an extension for the duration of the emergency and the Board of the Authority, upon recommendation of the Chief Executive Officer, may grant two additional six-month extensions; provided, however, that:

1. The extensions are due to the economic disruption caused by the emergency;

2. The project is delayed due to unforeseeable acts related to the project beyond the eligible business's control and without its fault or negligence;

3. The eligible business is using best efforts, with all due diligence, to proceed with the completion of the project and the submission of the certification; and

4. The eligible business has made, and continues to make, all reasonable efforts to prevent, avoid, mitigate, and overcome the delay.

(f) The certifications required at (d) above shall be in the following form:

1. The business shall submit a certification of a qualified independent certified public accountant, which may be made pursuant to an agreed upon procedures letter acceptable to the Authority, relating to the capital investment. Capital investment in a complex of buildings that are not proximate shall be certified for each building. If the project seeks to qualify for the bonus pursuant to N.J.A.C. 19:31-22.8(d)2, in addition to submitting a certification of capital investment in the qualified business facility, the business shall submit a certification for the capital investment in the industrial or research and development portion of the premises for industrial or research and development use. In the event the capital investment is reduced below the capital investment amount set forth at N.J.A.C. 19:31-22.3(c), the business shall remain

eligible if the business donates the difference between the amount set forth at N.J.A.C. 19:31-22.3(c) and the amount of capital investment invested into the Infrastructure Fund. If the amount paid into the Infrastructure Fund together with the amount of capital invested is less than the capital investment in the approval of the application, the Authority may reevaluate the net positive economic benefit and reduce the size of the grant accordingly. If the certified capital investment, together with any donation to the Infrastructure Fund, is less than the minimum eligibility requirement, the business shall no longer be eligible for tax credits.

2. The business shall submit a certification of a qualified independent certified public accountant, which may be made pursuant to an agreed upon procedures letter acceptable to the Authority, relating to employment. The number of new and retained full-time jobs in the certification shall be utilized by the Authority in the calculation of tax credits. The number of full-time jobs utilized by the Authority in the calculation of tax credits shall not be increased, regardless of additional jobs located at the qualified business facility. Except as set forth at N.J.A.C. 19:31-22.10(f), in no event will the number of jobs exceed the number of jobs previously approved by the Board. To the extent a business has received an award for both new and retained full-time jobs, the business shall meet the employment requirements as set forth at N.J.A.C. 19:31-22.4(c) and (d). In the event the number and median salary of new or retained full-time jobs is reduced below the number or median salary of new or retained full-time jobs in the approval of the application, the Authority may reevaluate the net positive economic benefit and reduce the size of the grant accordingly. If the certification indicates that the employment is less than the minimum eligibility requirement set forth at N.J.A.C. 19:31-22.3(d), the business shall no longer be eligible for tax credits.

3. The Authority shall qualify certified public accountants and provide to the business the list of qualified certified public accountants; provided, however, the business may select a certified public accountant that is independent to the business and not on the Authority's list of qualified certified public accountants for purposes of the capital investment certification, or the business's chief financial officer may certify for purposes of the employment certification upon the Authority's prior approval, if the business demonstrates an extenuating circumstance prohibiting the business from retaining a qualified certified public accountant. Such circumstances include, but are not limited to, the unavailability of any of the qualified certified public accountants to timely complete the certification or none of the qualified certified public accountants are independent to the business, or the business is a small business.

4. The business shall submit a certification with a floor plan showing the qualified building facility as of the date of the certifications identifying the uses pursuant to N.J.A.C. 19:31-22.3(c) and square foot of gross leasable area for each such use.

5. The business shall submit a certification from a licensed engineer that the project has adhered in all material respects to the plan submitted by the business describing how the business would satisfy the minimum environmental and sustainability standards;

6. At, or before, the date of certifications, any modification to the project as approved by the Board, including, but not limited to, a reduction in the amount of the capital investment, new and retained full-time jobs, or square foot of gross leasable area for each use pursuant to N.J.A.C.

19:31-22.3(c), shall require review and approval by the Authority to determine that the project as modified does not undermine the basis for the tax credit award approved.

7. The Authority may request additional information or certifications from the business to determine eligibility and may seek information from the Department of Labor and Workforce Development to support the certifications.

8. The Authority may recalculate the tax credit award, which may include a reevaluation of the amount necessary to induce the project to be sited in New Jersey pursuant to N.J.A.C. 19:31-22.8(h), if the certifications demonstrate different assumptions or facts upon which the Authority relied to calculate the tax credit award at approval.

(g) In any submission required by the Authority pursuant to the approval letter or the certifications at (f) above, the [owner] **chief executive officer** of the eligible business, or an [authorized agent of the owner] **equivalent officer**, shall certify that the information provided is true under the penalty of perjury.

(h) Once the Authority accepts the certifications at (f) above and the Authority determines that other required conditions have been met, within 90 days of the Authority's acceptance of the certifications and evidence satisfactory to the Authority, the Authority shall notify the business and notify the Director, and the business shall receive its tax credit certificate which will be based on the information submitted in the certifications pursuant to (e) above, provided it shall not exceed the maximum amount determined by the Board pursuant to N.J.A.C. 19:31-22.7(g) and 22.8. The use of the tax credit certificate shall be subject to the receipt of an annual certificate of compliance issued by the Authority.

19:31-22.10 Reporting requirements and annual reports

(a) An eligible business that is awarded tax credits under the program shall submit, annually, commencing in the year in which the grant of tax credits is issued and for the remainder of the commitment period, a report that indicates that the eligible business continues to maintain the number of new and retained full-time jobs and provides the salaries specified in the commitment agreement, including, but not limited to:

1. A certification, made pursuant to an agreed upon procedures letter acceptable to the Authority, of a qualified independent certified public accountant, which shall be qualified by the Authority pursuant to N.J.A.C. 19:31-22.9(f)3, containing the following:

i. The number of full-time employees and new or retained full-time jobs employed [at, or associated with, the qualified business facility] **in the State**;

ii. The list of affiliates that contributed to the full-time employees [at, or associated with, the qualified business facility] **in the State**;

iii. The number of full-time employees in the business's Statewide workforce;

iv. The number of full-time employees in New Jersey in the last tax period prior to the credit amount approval of any affiliate that contributed to the full-time employees and was not listed in the application; and

v. A copy of the business's applicable New Jersey tax return showing business income and withholdings as a condition of its continuation in the program, and the quarterly wage report required pursuant to N.J.S.A. 43:21-14 submitted to the Department of Labor and Workforce Development together with an annual payroll report showing:

(1) The new full-time jobs that were created in accordance with the project agreement;

(2) The new full-time jobs created during each subsequent year of the commitment period; and

(3) The withholdings and salaries, as measured by the median salary, of the new and retained full-time jobs created and the amount of withholdings paid to New Jersey;

2. Information on any change or anticipated change in the identity of the affiliates comprising the business elected to claim all or a portion of the credit; and

3. The eligible business shall confirm that each contractor or subcontractor performing work at the qualified business facility is registered as required by "The Public Works Contractor Registration Act," P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.), has not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and possesses a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury.

[3].4. A certification indicating whether or not the business is aware of any condition, event, or act that would cause the business not to be in compliance with the approval, the Act, the commitment agreement, community benefits agreement pursuant to subsection b. of section 73 of P.L. 2020, c. 156, and this subchapter.

(b) The certified report required pursuant to (a) above is due 120 days after the end of the business's tax privilege period; and failure to timely submit the certified report, absent extenuating circumstances and the written approval of the Authority, shall result in the forfeiture of the tax credits for that privilege period.

(c) An eligible business shall explain, in the certified report required pursuant to (a) above, the reason for any discrepancies between the annual payroll report submitted by the eligible business to the Authority and the quarterly wage report submitted to the Department of Labor and Workforce Development. The [owner] **chief executive officer** of the eligible business, or an [authorized agent of the owner] **equivalent officer**, shall certify that the information provided pursuant to (a) above and this subsection is true under the penalty of perjury. Claims, records, or statements submitted by an eligible business to the Authority in order to receive tax credits shall not be considered claims, records, or statements made in connection with State tax laws.

(d) Upon receipt and review to the Authority's satisfaction of each certified report required pursuant to (a) above submitted during the eligibility period, the Authority shall provide to the eligible business and the Director a certificate of compliance indicating the amount of tax credits that the eligible business may apply against its tax liability. The Authority shall prorate the tax credit for the first and last years of the eligibility period based on the number of full months the project was certified in the year the eligible business first certifies. No tax credit certificate will be valid without the certificate of compliance issued for the relevant tax privilege period. The certificate of compliance will indicate the amount of the tax credit certificate that will be recommended to the Division of Taxation for issuance for an identified tax privilege period.

(e) In conducting its annual review, the Authority may require a business to submit any information determined by the Authority to be necessary and relevant to its review.

(f) If the certified report required pursuant to (a) above submitted by a small business demonstrates that the business has met the number of new full-time employees specified in the growth plan pursuant to N.J.A.C. 19:31-22.3(d)1 in each year of the eligibility period, then the business shall be entitled to an increased credit amount for that tax period, and each subsequent tax period, for each additional full-time employee added above the number of full-time employees certified, until the full-time employees number meets the maximum number projected for the final year of the eligibility period. Failure to meet the projections in any year shall not constitute a default but shall cause the Authority to reduce the award in accordance with a schedule attached to the project agreement.

(g) An eligible business shall forfeit the credit amount for any tax period for which the eligible business's documentation remains uncertified as of the date for certification indicated in the commitment agreement, although credit amounts for the remainder of the years of the eligibility period shall remain available to the eligible business.

(h) Full-time employment for an accounting or privilege period shall be determined as the average of the monthly full-time employment for the period.

(i) A business may include an affiliate for any period, provided that the business provides a valid tax clearance certificate for the affiliate and a verification of the nature of the affiliate relationship during the relevant period, and provided further that the affiliate provides acceptable responses to the Authority's legal disclosures inquiries, as determined by the Authority, and the affiliate executes a joinder to the commitment agreement, in the form approved by the Authority. A business may remove an affiliate by notifying the Authority and the Director, in a form approved by the Authority, of the affiliate that is to be removed. A formal modification of the Authority's approval of the approval letter shall not be necessary to add or remove an affiliate after approval or execution of the approval letter.

(j) A business may change its name filed with the Authority by providing a copy of the filed amendment to the certificate of incorporation or formation, as the case may be, of the business and a valid tax clearance certificate with the business's new name. A formal modification of the Authority's approval shall not be necessary to change a business's name after approval or execution of the approval letter.

19:31-22.11 Tax credit amount; application and allocation of the tax credit

(a) Except for a small business that will have incremental or additional tax credits pursuant to a growth plan pursuant to N.J.A.C. 19:31-22.10(f), for each tax accounting or privilege period during the eligibility period, a business may apply the amount of tax credits equal to the total credit amount divided by the duration of the eligibility period in years (fractions of a cent rounded down) subject to the provisions of the Act and this subchapter. Except as set forth at N.J.A.C. 19:31-22.10(f), the total tax credit amount that a business may apply for each year shall not exceed the maximum annual amount determined by the Board at approval pursuant to N.J.A.C. 19:31-18.7(g) and 22.8.

(b) Upon notification to the Director by the Authority, the Director shall allow the eligible business a tax credit. The eligible business may apply the credit allowed by the Director against the eligible business's tax liability for the tax period in which the Director allowed the tax credit or may carry forward the credit for use by the eligible business in any of the next seven successive tax periods, which credit shall thereafter expire.

(c) The amount of credit allowed may be applied against the tax liability otherwise due pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5); sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3); section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15); or N.J.S.A. 17B:23-5.

(d) Credits granted to a partnership shall be passed through to the corporate partners, corporate members, or corporate owners, respectively, pro-rata, or pursuant to an executed agreement among all partners, members, or owners documenting an alternate distribution method provided to the Director accompanied by any additional information as the Director may prescribe consistent with any rule, guidance, or other publication issued by the Division of Taxation.

1. With respect to credits passed through to a person subject to tax liability due pursuant to sections 2 or 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), the person shall be allowed to apply credits against the person's tax liability without the provision of a tax credit certificate to the Division of Taxation in the Department of the Treasury for the tax period accompanying the person's tax return, subject to the person submitting any additional authenticating or supporting information with the tax return, and the person shall be considered the tax certificate holder and be subject to this subsection.

2. The Authority may recapture all or part of any tax credits claimed by a person pursuant to (d)1 above with penalties and interest from the person or the business in the event the Division of Taxation in the Department of the Treasury does not issue a tax credit certificate in an amount at least equal to the tax credit amount claimed on the person's tax return for the applicable tax period. Such recapture amount may include interest on the recapture amount, at a rate equal to the statutory rate for tax deficiencies, plus any statutory penalties, and all costs incurred by the Authority and the Division of Taxation in the Department of the Treasury in connection with the pursuit of the recapture, including, but not limited to, counsel fees, court costs, and other costs of

collection. The Authority shall confer with the Division of Taxation to determine the recapture amount.

(e) The Director shall prescribe the order of priority of the application of the credit allowed under this section and any other credits allowed by law against the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5). The amount of a credit applied pursuant to this section against the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) for a privilege period, together with any other credits allowed by law, shall not reduce the tax liability to an amount less than the statutory minimum provided at subsection (e) of section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5).

(f) In lieu of applying any credit certificate or credit transfer certificate against tax liability otherwise due pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5); sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3); section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15); or N.J.S.A. 17B:23-5, the credit certificate or credit transfer certificate may be surrendered to the Division of Taxation in the Department of the Treasury for a cash payment equal to 90 percent of the amount of tax credits evidenced by the certificate, subject to appropriation and the availability of funds, provided that the issuance date of the credit certificate or credit transfer certificate to the taxpayer surrendering such certificate occurred at least two years prior to the date of surrender **and the credit certificate or credit transfer certificate has not been sold or assigned previously**, in a form and manner prescribed by the Director.

19:31-22.12 Application for tax credit transfer certificate

(a) An eligible business may apply to the Director and the Chief Executive Officer of the Authority for a tax credit transfer certificate, within three years of the tax period in which the Director allows the eligible business a tax credit, in lieu of any amount of the tax credit against the eligible business's State tax liability. The tax credit transfer certificate, upon receipt thereof by the eligible business from the Director and the Chief Executive Officer of the Authority, may be sold or assigned, in an amount not less than \$25,000, within three years of the tax period in which the eligible business receives the tax credit transfer certificate from the Director, to another person that may have a tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5); sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3); section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15); or N.J.S.A. 17B:23-5. A purchaser or assignee of a tax credit transfer certificate pursuant to this section shall apply the transferred credit against the same tax for which the eligible business was approved a tax credit under the program. The tax credit transfer certificate provided to the eligible business shall include a statement waiving the eligible business's right to claim the credit that the eligible business has elected to sell or assign.

(b) The eligible business shall not sell or assign a tax credit transfer certificate allowed pursuant to this section for consideration received by the eligible business of less than 85 percent of the transferred credit amount before considering any further discounting to present value that shall be permitted. The tax credit transfer certificate issued to the eligible business by the Director shall be subject to any limitations and conditions imposed on the application of State tax

credits under this program and any other terms and conditions that the Director may prescribe, including, but not limited to, any applicable statutes of limitations for claiming a refund or credit.

(c) With respect to credits to be sold or assigned, in full or in part, pursuant to an application to the Authority for a tax credit transfer certificate by a business to a person subject to tax liability due pursuant to sections 2 or 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 or 54:18A-3), the person shall be allowed to apply the credits against the person's tax liability without the provision of a tax credit transfer certificate to the Division of Taxation in the Department of the Treasury for the tax period accompanying its tax return, subject to the person submitting any additional authenticating or supporting information with the tax return, and the person be considered a tax credit transferee and be subject to (d) below.

(d) The Authority may recapture all or part of any tax credits claimed by a person pursuant to (c) above with penalties and interest from the person or the business in the event the Authority or the Director does not issue a tax credit certificate in an amount at least equal to the tax credit amount claimed on the person's tax return for the applicable tax period. Such recapture amount may include interest on the recapture amount, at a rate equal to the statutory rate for tax deficiencies, plus any statutory penalties, and all costs incurred by the Authority and the Division of Taxation in the Department of the Treasury in connection with the pursuit of the recapture, including, but not limited to, counsel fees, court costs, and other costs of collection. The Authority shall confer with the Division of Taxation to determine the recapture amount.

(e) The purchaser or assignee of a tax credit transfer certificate shall be subject to any limitations and conditions that apply to the use of the tax credits by the eligible business. A purchaser or assignee of a tax credit transfer certificate pursuant to this section shall not make any subsequent transfers, assignments, or sales of the tax credit transfer certificate.

(f) The Authority shall publish on its Internet website the following information concerning each tax credit transfer certificate approved by the Authority and the Director pursuant to this section:

1. The name of the transferrer;
2. The name of the transferee;
3. The value of the tax credit transfer certificate;
4. The State tax against which the transferee may apply the tax credit; and
5. The consideration received by the transferrer.

19:31-22.13 Cap on total credits

The combined value of all credits approved by the Authority pursuant to this program shall be subject to limitations set forth at section 98 of P.L. 2020, c. 156. The amount of available tax credit shall be posted at the beginning of each calendar year on the website of the Authority.

19:31-22.14 Reduction and forfeiture of tax credits

(a) If, in any tax period, an eligible business reduces the total number of full-time employees in its Statewide workforce by more than 20 percent from the number of full-time employees in its Statewide workforce in the last tax period prior to the credit amount approval under the program, then the eligible business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the eligible business's Statewide workforce to the threshold levels required by this subsection has been reviewed and approved by the Authority, for which tax period and each subsequent tax period the full amount of the credit shall be allowed.

(b) Except for a small business, if the annual report filed by an eligible business pursuant to section 77 of P.L. 2020, c. 156, and N.J.A.C. 19:31-22.10(a) provides that the number of new full-time employees employed by the eligible business [at, or associated with, the qualified business facility,] **subject to the project agreement** or the salaries of the new full-time employees, as measured by the median salary, was reduced by more than 10 percent of the number of new full-time employees, or salaries thereof, in the annual report of the prior year, or the [commitment] **project** agreement if the annual report is the first such report filed, then the Authority may reevaluate the net positive economic benefit of the project and reduce the size of the award accordingly. This reduction shall not affect any recapture pursuant to (f) below.

(c) If, in any tax period, the amount of withholdings paid to New Jersey or full-time employees employed by the eligible business [at, or associated with, the qualified business facility,] **subject to the project agreement** or the salaries thereof, drops below 80 percent of the withholdings and number of new and retained full-time jobs, and the salaries thereof, specified in the [commitment] **project** agreement or the [incentive] **project** phase agreement, then the eligible business shall forfeit its tax credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating the restoration of the amount of withholdings paid to New Jersey or number of full-time employees employed by the eligible business [at, or associated with, the qualified business facility] **subject to the project agreement** to 80 percent of the withholdings and number of jobs specified in the [commitment] **project** agreement or [incentive] **project** phase agreement or the restoration of 80 percent of the salaries specified in the [commitment] **project** agreement is reviewed and approved by the Authority.

(d) If the business is not in compliance with the community benefits agreement pursuant to N.J.A.C. 19:31-22.9(c), the Authority shall reduce the size of the award by the amount equal to 120 percent of the monetary value of the contribution or contributions for which the business is not in compliance. This reduction shall not affect any recapture pursuant to (f) below.

(e) If at any time during the eligibility period, the Authority determines that the eligible business made a material misrepresentation on the eligible business's application, the eligible business shall forfeit all tax credits awarded under the program, which shall be in addition to any other remedies in the commitment agreement and any criminal or civil penalties to which the business and the officer may be subject.

(f) The Authority may recapture all, or part of, a tax credit awarded if an eligible business does not remain in compliance with the requirements of a project agreement for the duration of the commitment period. A recapture pursuant to this subsection may include interest on the recapture amount, at a rate equal to the statutory rate for corporate business or insurance premiums tax deficiencies, plus any statutory penalties, and all costs incurred by the Authority and the Division of Taxation in the Department of the Treasury in connection with the pursuit of the recapture, including, but not limited to, counsel fees, court costs, and other costs of collection. Failure of the eligible business to meet any program criteria shall constitute a default and shall result in the recapture of all or part of the tax credit awarded.

(g) With the exception of N.J.A.C. 19:31-22.12(d), if all or part of a tax credit sold or assigned pursuant to section 78 of P.L. 2020, c. 156, and N.J.A.C. 19:31-22.12 is subject to recapture, then the Authority shall pursue recapture from the eligible business and not from the purchaser or assignee of the tax credit transfer certificate.

(h) Any funds, **net of costs incurred by the Authority**, recaptured pursuant to this section, including penalties and interest, shall be deposited into the General Fund of the State.

19:31-22.15 Effect of sale or lease of qualified facilities and relocation of qualified business facility

(a) A small business may move its qualified business facility, upon prior notice to the Authority, provided that the business remains in New Jersey during the commitment period and, for the purposes of this subsection, the tax credit calculation for each new or retained job will be recalculated for the new location, but the tax credit amount shall not be greater than the amount approved.

(b) Except for a small business[, or an eligible business engaged primarily in a targeted industry with less than 50 employees at application]:

1. If the qualified business facility is sold in whole or in part during the eligibility period, the new owner shall not acquire the capital investment of the seller, provided, however, that any tax credits of tenants shall remain unaffected. If the business merges or consolidates with another entity, the resulting or transferee entity shall not be considered the new owner. The seller shall forfeit all tax credits for the tax period in which the sale occurs and all subsequent tax periods, provided, however, that an eligible business may change the location of the qualified business facility before certification of the capital investment if:

i. The new facility:

(1) Meets all applicable location qualifying criteria and has a gross leasable area not less than the gross leasable area of the qualified business facility initially approved by the Authority, and the alternate qualified business facility meets the minimum capital investment and sustainability requirements of the program; or

(2) Does not meet all applicable location qualifying criteria or has less gross leasable area than the gross leasable area of the qualified business facility initially approved by the Authority, if the alternate qualified business facility meets the minimum capital investment and sustainability requirements of the program. The Authority shall require a [new cost benefit analysis] **cost comparison of the originally approved location and the alternate qualified business facility** illustrating the economics of the occupancy at the alternate proposed qualified business facility location for the remaining duration of the commitment period compared to the economics of continuing occupancy at the qualified business facility proposed to be vacated. The alternate proposed qualified business facility must be 90 percent or more of the aggregate cost of the qualified business facility proposed to be vacated. If less than 90 percent, the Authority shall review the business's decision to relocate, including supporting documentation evidencing the reasons for relocation, to determine if the relocation to the alternate qualified business facility is consistent with the Board's approval of the application for the qualified business facility to be vacated. The Authority shall recalculate the net positive economic benefit of the project to reflect the economics of occupancy at the alternate proposed location for the remaining duration of the net positive economic benefit test period. The award of tax credits shall be reduced consistent with the variations in qualifying criteria for the alternate qualified business facility location, as well as in a manner consistent with the revised net positive economic benefit calculation.

(c) In the event that the modified project economics materially deviate from the economics of the initial approval in a manner that undermines the recommendation of approval made by the staff of the Authority at the time of the initial approval, then the business requesting to relocate a qualified business facility shall be required to obtain the approval of the Board.

(d) If a business leases, or subleases, or otherwise reduces its tenancy in whole or in part during the eligibility period, the new tenant shall not acquire the tax credits of the business, and the business shall forfeit all tax credits for any tax period of its lease or sublease in which the business, in continued occupation of a portion of the qualified business facility, fails to maintain the number of jobs required for the business to earn tax credits for the tax period or fails to independently satisfy the minimum capital investment or sustainability requirements for the program as set forth at section 71 of P.L. 2020, c. 156. Provided, however, if the capital investment of the business in the occupied portion of the qualified business facility is below the project minimum capital investment as set forth at section 71 of P.L. 2020, c. 156, the business may include capital investment made by, or on behalf of, the new tenant in the leased or subleased portion of the qualified business facility, so long as that capital investment is not the subject of an independent application under an incentive program with the Authority. Notwithstanding the foregoing, a business may lease or sublease a portion of its qualified business facility to a new tenant that is a quality child care facility and up to five percent for any other new tenant without forfeiting any of the business's credits, provided that the new tenant's full-time employees and capital investment shall not be included in the business's eligible full-time employees or capital investment.

19:31-22.16 Affirmative action and prevailing wage

[The Authority's affirmative action requirements at P.L. 1979, c. 203 (N.J.S.A. 34:1B-5.4) and N.J.A.C. 19:30-3 and prevailing wage requirements at P.L. 2007, c. 245 (N.J.S.A. 34:1B-

5.1), N.J.A.C. 19:30-3, and 19:31-22.3(b)8 will apply to projects undertaken in connection with financial assistance received under the program.]

(a) The Authority's affirmative action requirements at P.L. 1979, c. 203 (N.J.S.A. 34:1B-5.4) and N.J.A.C. 19:30-3 shall apply to construction contracts at the qualified business facility undertaken in connection with financial assistance received under the program. The affirmative action requirements shall apply for two years after the first certificate of compliance is issued.

(b) The Authority's prevailing wage requirements at P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1), N.J.A.C. 19:30-4, and 19:31-22.3(b)8 shall apply to construction work at the qualified business facility by the business or construction work incurred on behalf of the business by the landlord, as follows:

1. Construction contracts for work performed 24 months prior to the eligibility period pursuant to N.J.S.A. 34:1B-5.1(b); and

2. Construction contracts for work undertaken in connection with financial assistance received under the program. In accordance with section 1 of P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.1), nothing in this paragraph shall be construed as requiring the payment of prevailing wage for construction commencing more than two years after the Authority has issued the first certificate of compliance.

(c) During the commitment period, prevailing wage shall apply to building services at the qualified business facility pursuant to N.J.A.C. 19:22.3(b)8.

19:31-22.17 Appeals

(a) The Board's action shall be effective 10 business days after the Governor's receipt of the minutes, provided neither an early approval nor veto has been issued.

(b) An applicant may appeal the Board's action by submitting in writing to the Authority, within 20 calendar days from the effective date of the Board's action, an explanation as to how the applicant has met the program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(c) Appeals that are timely submitted shall be handled by the Authority as follows:

1. The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The Authority may consider new evidence or information that would demonstrate that the applicant meets all of the application criteria.

2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. After reviewing the report, the Chief Executive Officer of the Authority may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.

3. The Board shall consider the hearing officer's report, the recommendation of the Chief Executive Officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Board shall issue a final decision on the appeal.

4. Final decisions rendered by the Board shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.

19:31-22.18 Recovery Infrastructure Fund

(a) The Authority shall establish a dedicated fund to be known as the Recovery Infrastructure Fund. Money in the fund shall be dedicated to the purpose of funding local infrastructure, which shall include:

1. Buildings and structures, such as schools, fire houses, police stations, recreation centers, public works garages, and water and sewer treatment and pumping facilities;
2. Sidewalks, streets, roads, ramps, and jug handles;
3. Open space with improvements, such as athletic fields, playgrounds, and planned parks;
4. Open space without improvements;
5. Public transportation facilities, such as train stations and public parking facilities; and
6. The purchase of equipment considered vital to public safety.

(b) The fund shall be credited with money remitted by eligible businesses pursuant to paragraph (2) of subsection b. of section 71 of P.L. 2020, c. 156, or N.J.A.C. 19:31-22.3(c)6 or 22.9(f)1.

(c) Money remitted to the fund by an eligible business pursuant to N.J.A.C. 19:31-22.3(c)6 or 22.9(f)1 shall be earmarked for use on local infrastructure projects in the municipality in which the eligible business's project is located.

(d) A municipality shall apply to the Authority, in a form and manner prescribed by the Authority, for disbursements from the Recovery Infrastructure Fund. The Authority, in

consultation with the Department of Community Affairs, shall review and approve applications for disbursements of money from the fund pursuant to the provisions of this section.

Applications shall be reviewed in the order that completed applications are received. In order to be approved, an application will be required to meet a minimum score established by the Authority in consultation with the Department of Community Affairs, based on factors, including, but not limited to, whether the applicant demonstrates that it has a financing plan for the entire project and the proposed public benefit of the project. The Authority shall issue an approval with conditions to be met prior to disbursements.

(e) The Authority shall coordinate with the Department of Community Affairs to carry out the local infrastructure projects funded through the Recovery Infrastructure Fund. The Authority shall also coordinate with the Department of Community Affairs on the involvement by other boards, commissions, institutions, departments, agencies, and State officers and employees.

19:31-22.19 Reports on implementation of program

Beginning in 2022 and every two years thereafter, a State college or university shall, pursuant to an agreement executed between the State college or university and the Authority, prepare a report on the implementation of the program, and submit the report to the Authority, the Governor, and, pursuant to section 2 of P.L. 1991, c. 164 (N.J.S.A. 52:14-19.1), the Legislature. Each biennial report required pursuant to this section shall include a description of each eligible business receiving a tax credit under the program, a detailed analysis of the consideration given to each applicant, an analysis of whether the incentives awarded influenced the eligible business's decisions to locate a qualified business facility in the State, the return on investment for incentives awarded, the eligible business's impact on the State's economy, and any other metrics the State college determines are relevant based upon national best practices. The Authority shall prepare a written response to the report, which the Authority shall submit to the Governor and, pursuant to section 2 of P.L. 1991, c. 164 (N.J.S.A. 52:14-19.1), to the Legislature.

19:31-22.20 Severability

If any section, subsection, provision, clause, or portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: December 8, 2021

SUBJECT: Proposed Rule Amendments: Technology Business Tax Certificate Transfer (NOL) Program: (N.J.A.C. 19:31-12.1)

Request:

The Members are requested to approve:

1. Attached proposed amendments to the Technology Business Tax Certificate Transfer (NOL) Program rules to implement certain policy and statutory revisions pursuant to the recently enacted New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, and later amended by P.L. 2021, c. 160, as well as implement a revised fee structure. These actions authorize Staff to (a) submit the proposed rule amendments for promulgation in the New Jersey Register and (b) submit the proposed program rules as final adopted rules for promulgation in the New Jersey Register if no formal comments are received; subject to final review and approval by the Office of the Attorney General and the Office of Administrative Law.

Program Purpose / Background:

The New Jersey Economic Recovery Act (ERA) of 2020 (P.L.2020, c.156) became law on January 7, 2021. The ERA presents a strong recovery and reform package that will address the ongoing economic impacts of the COVID-19 pandemic and position New Jersey to build a stronger and fairer economy that invests in innovation, in our communities, and in our small businesses the right way, with the protections and oversight taxpayers deserve. Tax incentives and other investment tools are critical to economic development, and when used correctly they can drive transformative change that uplifts communities and creates new opportunities for everyone. P.L. 2021, c. 160 was later enacted in July 2021 to revise various provisions of the New Jersey Economic Recovery Act of 2020” and other economic development programs.

These actions include 15+ economic development programs, including:

- Tax credits to incentivize job creation and capital investment;
- Investment tools to support and strengthen New Jersey’s innovation economy;

- Tax credits to strengthen New Jersey’s communities including revitalization of brownfields and preservation of historic properties;
- Financial resources for small businesses, including those impacted by the COVID-19 pandemic;
- Support for new supermarkets and healthy food retailers in food desert communities;
- Additional tax credits for film and digital media.

The Technology Business Tax Certificate Transfer (NOL) Program is one of the 15+ programs created or updated under the ERA. Enacted January 12, 1998 by P.L. 1997, c. 334, the 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.

P.L.2020, c.156 (New Jersey Economic Recovery Act) authorized the following updates to the NOL Program:

- Increase the annual total amount of tax benefits available for participating companies to \$75,000,000 from \$60,000,000
- Increase the maximum lifetime value of tax benefits available for participating companies to \$20,000,000 from \$15,000,000
- Revise the portion of the defined term “Full-time employee” relating to a health benefits plan
- If needed, allow modification of the following defined terms: “Biotechnology”, “Biotechnology company”, “Technology company”

P.L. 2021, c. 160 later amended the New Jersey Economic Recovery Act, and authorized the following additional updates to the NOL Program:

- Increase the initial allocation of tax benefits available for participating companies’ location within an innovation zone to \$15,000,000 from \$10,000,000
- Expand the type of participating companies subject to the initial allocation to also include ones located within an opportunity zone as well as ones certified as a woman- or minority-owned business (W/MBE) at the time of program application
- Adds the defined term “opportunity zone”

As part of the proposed rule amendments being presented for the Members’ considerations, staff also recommends revising the fee structure to enable more participation in the program from qualified companies, as well as to more accurately reflect the Authority’s administrative costs associated with reviewing the program applications. These fee changes specifically include:

- Decreasing the application fee for all participating companies to \$1,000 from \$2,500
- Adding an approval fee equal to 1 percent of the tax benefit award for any award greater than \$100,000 capped at a max fee of \$20,000 per applicant per year (application fee credited toward approval fee).

Increase to Available Tax Benefits and Revision to Tax Benefit Allocation

Pursuant to P.L.2020, c.156 (ERA) and P.L. 2021, c. 160, the attached rule amendments (N.J.A.C. 19:31-12.1 through 12.8) increase the annual tax benefit amount that can be awarded to all approved applicant companies. The previous annual amount was \$60,000,000. Beginning with program year 2021, this amount is \$75,000,000. If the total request amount of all companies for a program year exceeds \$75,000,000, the benefit amount for each company is determined through a four-step distribution allocation. Starting in program year 2022, the first step for this allocation will expand to include participant companies not only located in an innovation zone, as in previous years, but also companies located in an opportunity zone as well as companies certified as woman- or minority-owned by the State of New Jersey. Furthermore, the benefit amount allocated in the first step will increase from \$10,000,000 to \$15,000,000. Finally, a company could previously receive a maximum benefit amount of \$15,000,000 over the company's lifetime. For the Program year 2021 and future years, the maximum amount is \$20,000,000. These legislative enhancements to the rules expand the program's size allowing more companies to participate annually while maintaining financial effectiveness for the benefit awards, as illustrated with an explanation of the NOL Program's administration.

In their annual application, technology and biotechnology companies request a tax benefit amount equal to a percentage of their operating losses. The New Jersey Division of Taxation confirms this amount. Then, the Authority aggregates the confirmed tax benefit amounts for all approved applicant companies. If this tax benefit amount total does not exceed \$75,000,000, each company would be eligible to sell their full, confirmed tax benefit amount to another company, limited to the maximum lifetime amount of \$20,000,000. But, if the aggregated benefit amount exceeds \$75,000,000, the benefit amount for each company would be determined by the Program's "Allocation of tax benefits" (19:31-12.7).

In the first stage, all companies located in an innovation zone, opportunity zone, or W/MBE certified receive up to \$250,000 of their confirmed benefit amount, limited to a maximum total amount of \$15,000,000 for all companies. Then, for any of these companies with benefit amounts exceeding \$250,000, the remainder of the \$15,000,000 amount is distributed on a pro rata basis. If the full \$15,000,000 benefit amount is distributed and some of these companies have not received their full tax benefit amount, they will join the remaining companies for the next stage of allocation. If the full \$15,000,000 benefit amount is not completely distributed and all these companies have received their full benefit amount, the remaining funds are added to the remaining \$60,000,000 distributed in the next stage of allocation.

In this final stage of distribution allocation, again, all companies receive up to \$250,000 of their confirmed benefit amount. Then, for any of companies with benefit amounts exceeding \$250,000, the remainder of the \$60,000,000 amount is distributed on a set formula. The effect of this formula allows the companies to receive a percentage of their remaining benefit amount based on their portion of the total amount of benefit amount for all companies. Any companies not receiving their full benefit amount is allowed to carry forward this amount to future program years and will not have the unused amount count against their maximum lifetime benefit amount. If a company reaches their maximum lifetime benefit amount of \$20,000,000 at any time during the allocation process, the company cannot receive any additional benefit and is no longer included in the distribution allocation.

Update to Program Fee Structure

The rule amendment to “Application to the program” (19:31 - 12.4) and “Evaluation process” (19:31-12.5) would reduce the application fee charged to a company with application submission to \$1,000 from its current level of \$2,500 starting with the 2022 program year.

Additionally, a new approval fee would be implemented for any applicant company that receives a final allocated tax benefit amount more than \$100,000. This approval fee would be equal to one percent (1%) of the final allocation of tax benefits less the application fee (\$1,000) and would be included as a requirement to close the benefit transaction. The proposed fees, in total, will be capped and not exceed \$20,000 per application per year.

These suggested, tiered fees will allow the smallest NOL Program participant companies to incur lower fees, and hopefully, encourage more companies to apply. Additionally, the largest benefit recipients will incur apportioned fees aligned with the time and effort to review their submission. Generally speaking, larger awardees are often public companies with significantly more complex organizational structures and complex Intellectual Property ownership rights. Their applications to the NOL Program often require more in-depth reviews which necessitate more diligence and time by staff increasing the General and Administrative expense for operating the program. Furthermore, the fee has been unchanged in the last 10 years. The update will help offset inflation.

A scenario analysis was performed on multiple structures to arrive at the proposed model. The estimated, fully loaded administrative cost for the NOL program is \$686,000 annually. In recent years examining the program from 2014 to 2019, approximately 54 applications have been received per year, resulting in an average application cost of \$12,704.

The average award for an NOL applicant has been approximately \$1-1.25 million per year, historically. Assuming a \$1.25 million average award, the 1% approval fee would result in an average fee of \$12,500 and be directly in line with the average staff cost. Of note, the awards generally have a few outliers receiving a substantial award amount. And, given the previously noted diligence on some of the larger awards but to limit excess fees which are not aligned with average cost, a total fee cap is recommended. Data collected from the last 6 program years (2014-2019) shows that a large portion of those applicant’s awards are significantly less than the average.

Data shows that more than 25% of applicants receive less than \$100,000, and almost 50% of applicants receive less than \$500,000. The proposed fee of \$1,000 will be less burdensome for the early-stage start-ups that are contemplating program participation and help to encourage an application submission. The updated fee will also benefit any participant not approved or approved but has no benefit available to sell, per the guidance from the Division of Taxation.

The chart below shows all applications from 2014-2019, and the totals for each award range.

| 2014-2019 | | |
|--------------------|--------------|-----|
| Greater than | Less than = | |
| | \$0 | 40 |
| \$0 | \$100,000 | 34 |
| \$100,000 | \$250,000 | 24 |
| \$250,000 | \$500,000 | 41 |
| \$500,000 | \$750,000 | 39 |
| \$750,000 | \$1,000,000 | 24 |
| \$1,000,000 | \$1,500,000 | 40 |
| \$1,500,000 | \$2,000,000 | 17 |
| \$2,000,000 | \$2,500,000 | 7 |
| \$2,500,000 | \$3,000,000 | 5 |
| \$3,000,000 | \$4,000,000 | 7 |
| \$4,000,000 | \$5,000,000 | 4 |
| \$5,000,000 | \$7,500,000 | 8 |
| \$7,500,000 | \$10,000,000 | 2 |
| \$10,000,000 | | 2 |
| Total Applications | | 294 |

This chart shows the total aggregate percentage up to an award of \$1.5M (82% or majority of applications).

| Applications | Aggregate % | # |
|--------------|-------------|-----|
| 0-100k | 25.17% | 74 |
| 0 - 250K | 33.67% | 99 |
| 0 - 500K | 47.62% | 140 |
| 0 - 750K | 60.88% | 179 |
| 0 - 1M | 69.05% | 203 |
| 0 - 1.5M | 82.65% | 243 |

Over the past decade, the application fee has been a constant \$2,500 per application, regardless of award size. With an average of 54 applications in recent years, this comes out to total average fees of \$135,000. Even in the largest participation year over that span (58 applicants), the fees maximum was only \$145,000. This income covers a fraction of the estimated staff administrative cost required to undertake the significant program administration. The total estimated administrative cost for the NOL Program is \$686,000 annually. This amount was pooled based on the multiple stakeholders contributing to the program administration.

Every year, the NOL program has multiple tasks undertaken by a variety of Staff to complete the full program successfully. While the actual program deadline and review period only consist of a few months, program management continues throughout the year, and includes the following tasks:

- Business development
- Marketing/Communications
- IT updates of CRM and Online Application
- Application testing by Program Lead
- Marketing and exhibit submission documentation updates
- DAG review of legislative issues
- Application Pre-Submission – (1.5-2 months of pre-reviews, questions, conference calls)
- Monitoring/Reporting of past applicants' submission of Employee reporting to ensure operation in the state or clawback is triggered
- Application submission and 2-month review
- Declination/Appeals review
- Legal Affairs Reviews
- Taxation's analysis of Net Operating Losses
- Creation of Allocation pool and Award Packages
- Consistent updates and timing guidance from officers and program lead
- Closing Paperwork updated
- Closing review of documents, and additional employee checks
- Taxation analysis of final awards and creation of the tax certificates
- Post-closing reviews for recapture of tax benefits

The majority of the administrative cost is from salary allocation. The average amount of time attributed to the NOL Program for each employee involved was approximately 20% but can vary greatly according to role. Officers, sector leads, and management spend time counseling potential applicants, speaking at meetups and trade shows, and scheduling multiple follow up meetings to work through specifics of the program. Interns are hired specifically to work on the program and spend nearly 100% of their time for 3-4 months helping to review the initial application. Similarly, much of the Operations team is focused on the application review process from the months of July through September. Twenty percent of the current salary for this group came out to approximately \$335,000.

Additionally, Closing Services was allocated approximately \$85,000 in salary. Generally, the department has 3 analysts work on the program extensively for 3+ months of the year. Closing Services management is also heavily involved in multiple aspects of the program including sign off of packages, weekly NOL specific calls with taxation, and overseeing multiple issues that arise from the program.

Furthermore, approximately \$70,000 was added from 4 other departments who work on the program, and whose employees received between 2-5% of allocation time. This included IT (3-4 staff help with the program each year), Marketing and Communications (2-3 staff), Legal Affairs (had approximately 8 staff members help with legal reviews), and the 2 Deputy Attorney Generals who consistently provide guidance and clarification for the unique scenarios that crop up every program year.

The salary estimates of this aforementioned Staff is \$490,000, and when loaded at 1.4x, total \$686,000. This value just represents salary cost and does not include other related costs tied to activities like marketing or publication. Finally, the Post Closing team will make an annual review to determine if there is a need to recapture any benefit awards. Plus, Division of Taxation has staff dealing extensively with the program. These associates were not included in the estimation as well as any hearing officers involved in the Program declination and appeal process.

Again, the proposed fee structure better aligns fees collected with the administrative costs for the program. Additionally, as proposed, this fee structure would also allow for a fairer and more equitable fee for smaller program applicants. The 1.0% closing fee would be consistent regardless of the size of the award. However, this fee would be incurred across multiple years for repeat applicants and be concentrated for larger annual award recipients up to the maximum lifetime benefit of \$20M, which is fairly modest given the large financial benefit to the recipients.

The chart below shows what the total fees collected were for the years 2014-2019, and what they would have been under the proposed new fee structure. This fee will be a requirement to close the transaction.

| | Original | New |
|---------|-----------|-----------|
| 2014 | \$145,000 | \$435,578 |
| 2015 | \$110,000 | \$319,949 |
| 2016 | \$105,000 | \$336,510 |
| 2017 | \$110,000 | \$322,034 |
| 2018 | \$130,000 | \$374,133 |
| 2019 | \$135,000 | \$407,488 |
| Average | \$122,500 | \$365,949 |

New or Modified Definitions

The attached rule proposal makes the following modifications or additions to existing definitions:

- “Full-time employee” means a person employed by a new or expanding emerging technology or biotechnology company on a permanent or indefinite basis for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment and 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., 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, or who renders any other standard of service generally accepted by custom or practice as full-time employment, 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., or who is employed under a formal written agreement with an institution of higher education whereby the institution's students are employed by the technology or biotechnology company on a permanent basis within a single position and in compliance with all other requirements of this definition. 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] **a health benefits plan authorized pursuant to State or federal law**. “Full-time employee” 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.

The attached rule proposal establishes the following new definitions:

- “Board” means the Board of the New Jersey Economic Development Authority, established by section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).
- “Opportunity zone” means a federal population census tract in this State that was eligible to be designated as a qualified opportunity zone pursuant to 26 U.S.C. s.1400Z-1.

Compliance with Executive Order 63

In accordance with the Executive Order 63 directive to ensure outreach efforts are made to the public and affected stakeholders for agency rulemaking, the Authority posted the rule amendments to its Economic Recovery Act transparency website (www.njeda.com/economicrecoveryact) where the public were able to submit written feedback directly through the NJEDA’s website or through a newly established email account.

In addition, the Authority issued a news release advising the public that the NOL Program rule amendments were available for review and of the opportunity to provide informal input. Furthermore, several known stakeholder groups were contacted directly by the Authority and notified that the rule proposal was available for feedback via the Authority’s website.

Chief Compliance Officer Certification of Draft Rule Proposal

Pursuant to Section 101(a) of the ERA, the Chief Executive Officer is required to appoint a Chief Compliance Officer (CCO) to, among other things, “review and certify that the provisions of program rules or regulations provide the authority with adequate procedures to pursue the recapture of the value of an economic development incentive in the case of substantial noncompliance, fraud, or abuse by the economic development incentive recipient, and that program rules and regulations are sufficient to ensure against economic development incentive fraud, waste, and abuse”.

Bruce Ciallella has been designated the CCO. In that capacity, Mr. Ciallella has reviewed the proposed rules and regulations for the Program and is prepared to sign the certification, subject to the Board taking action to approve the same for submission to the New Jersey Office of Administrative Law for publication in an upcoming issue of the New Jersey Register.

Recommendation

The members are requested to approve the attached proposed amendments to the Technology Business Tax Certificate Transfer Program (NOL) rules to (1) implement updates based on statutory provisions pursuant to P.L. 2019, c. 145 and P.L.2020, c.156 as well as (2) update the application fee and implement an approval fee to companies participating in the annual NOL Program. The approval will also authorize Staff to (a) submit the proposed rule amendments for promulgation in the New Jersey Register and (b) submit the proposed program rules as final adopted rules for promulgation in the New Jersey Register if no formal comments are received; subject to final review and approval by the Office of the Attorney General and the Office of Administrative Law.



Tim Sullivan, CEO

Prepared by:
Matthew Fields
Clark Smith

Attachments: Appendix A – Proposed Rule Amendments – Technology Business Tax
Certificate Transfer Program

Appendix A

OTHER AGENCIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Authority Assistance Programs

Technology Business Tax Certificate Transfer Program

Proposed Amendments: N.J.A.C. 19:31-12.1, 12.2, 12.4, 12.5 and 12.7

Authorized By: New Jersey Economic Development Authority, Tim Sullivan, Chief Executive Officer.

Authority: P.L. 2019, c. 145.

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

Proposal Number: PRN 2022-_____.

Submit written comment by _____, 2022, to:

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

The agency proposal follows:

Summary

The New Jersey Economic Development Authority (“NJEDA” or “Authority”) is proposing amendments to the Technology Business Tax Certificate Transfer Program to implement certain policy and statutory revisions pursuant to the recently enacted New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, and P.L. 2021, c. 160, as follows:

N.J.A.C. 19:31-12.1 Applicability and scope – The proposed amendments revise the section to include new statutory citations for P.L. 2020, c. 156 and P.L. 2021, c. 160.

N.J.A.C. 19:31-12.2 Definitions – The proposed amendments update the subchapter to add a new definition of “Board” and “opportunity zone”; and, revise the definition of “full-time employee” pursuant to P.L. 2020, c. 156 pertaining to the requirement that to qualify as a “full time employee” an employee shall receive from the new or expanding emerging technology or biotechnology company certain health benefits, to delete “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”, which is replaced with “a health benefits plan authorized pursuant to State or federal law.”

N.J.A.C. 19:31-12.4 Application to the program – The proposed amendment at N.J.A.C. 19:31-12.4(a) reduces the amount of the existing \$2,500 non-refundable application fee to \$1,000; and the proposed amendment at N.J.A.C. 19:31-12.4(d) deletes the terms “Authority’s Board of Directors at its scheduled public meeting,” which is replaced with “Board” pursuant to the proposed new definition at N.J.A.C. 19:31-12.2, pertaining to final consideration of applications.

N.J.A.C. 19:31-12.5 Evaluation process – Proposed new N.J.A.C. 19:31-12.5(d) establishes a new non-refundable approval fee which shall be charged following the approval of the tax benefit by the Division of Taxation in the amount of one percent of the final allocation of tax benefit less the application fee of \$1,000 due upon final approval by the Authority.

N.J.A.C. 19:31-12.7 Allocation of tax benefits – The proposed amendments revise certain existing tax credit amounts authorized under the program pursuant to P.L. 2020, c. 156, as follows:

N.J.A.C. 19:31-12.7(a) revises references to the annual amount authorized from \$60,000,000 to \$75,000,000 for each State fiscal year, and from \$10,000,000 to \$15,000,000 which shall be allocated exclusively among eligible companies that operate within the boundaries of the innovation zones, and adds “opportunity zones” or “new or expanding emerging technology and biotechnology companies that are certified as a woman- or minority-owned business at the time of program application;”

N.J.A.C. 19:12.7(a)1 increases the maximum lifetime tax benefit of \$15,000,000 to \$20,000,000;

N.J.A.C. 19:12.7(a)2 increases the allocation, from \$10,000,000 to \$15,000,000, designated for eligible companies in innovation zones and adds as eligible for the allocation “opportunity zones” or “new or expanding emerging technology and biotechnology companies that are certified as a woman- or minority-owned business at the time of program application;”

N.J.A.C. 19:12.7(a)2i revises the \$250,000 per company allocation provided for eligible companies in innovation zones to include “opportunity zones” or “new or expanding emerging technology and biotechnology companies that are certified as a woman- or minority-owned business at the time of program application,” and revises the references to the former \$10,000,000 to \$15,000,000 allocation amount;

N.J.A.C. 19:12.7(a)2ii revises the reference to the former \$10,000,000 allocation to \$15,000,000 and includes, in addition to companies in innovation zones, “opportunity zones” or “new or expanding emerging technology and biotechnology companies that are certified as a woman- or minority-owned business at the time of program application” as pertains to an unused portion of the allocation amount which shall be available for that State fiscal year for certain

businesses that do not operate within the boundaries of an innovation zone or that are certified as a woman- or minority-owned business at the time of application;

N.J.A.C. 19:12.7(a)2iii adds to the eligible companies in innovation zones “or opportunity zones” and “new or expanding emerging technology and biotechnology companies that are certified as a woman- or minority-owned business at the time of program application” as eligible to participate in the remaining unmet eligible benefits in the allocation of the remaining pool as set forth in (a)3; and

N.J.A.C. 19:31-12.7(a)3iii increases the reference to the total amount of benefits authorized from \$60,000,000 to \$75,000,000 pertaining to the allocation on an apportioned basis following approval of certain benefits for applicants in N.J.A.C. 19:31-12.7(a)2, 3i and ii.

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

Social Impact

The 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. The proposed amendments will have a positive social impact as additional biotechnology and technology businesses would be eligible for assistance under the NOL program through the statutory increase in the annual amount authorized for tax credits from \$60,000,000 to \$75,000,000 and the increase in the maximum lifetime tax benefit of \$15,000,000 to \$20,000,000 per eligible business.

Economic Impact

The NOL Program strengthens the State's innovation economy through expanded financial support for emerging biotechnology and technology businesses. Therefore, it is anticipated that the availability of the increased tax credits will have a positive social impact.

Federal Standards Statement

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

Jobs Impact

The proposed amendments will result in the continued creation of an indeterminate number of new full-time, private sector jobs at emerging technology and biotechnology businesses in New Jersey as additional applicants are eligible and participating businesses make use of the expanded lifetime tax benefit.

Agriculture Industry Impact

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

Regulatory Flexibility Statement

The proposed amendments will impose reporting, recordkeeping, or other compliance requirements on small business, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. should the business look to apply for the expanded and increased tax credits. Generally, a business would be required to comply with the EDA's standard, on-line application process, otherwise, it is not anticipated that there will be a need for professional services, nor should there be any costs related to compliance with the proposed amendments. In addition, the proposed new amendments include a reduced application fee and new graduated approval fee designed to reduce the burden on applicants that may be small businesses.

Housing Affordability Impact Analysis

The proposed amendments will not impact affordable housing in New Jersey or evoke a change in the average costs associated with housing units, including multi-family rental housing and for sale housing in the State. The proposed amendments increase certain tax credit amounts available under the NOL Program to spur job creation and growth in New Jersey's current and next generation of high-skill, high-wage emerging technology industries.

Smart Growth Development Impact Analysis

The proposed new rules will not impact smart growth or evoke a change in the number of housing units or result in any increase or decrease in the average cost of housing or in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed amendments increase certain tax credit amounts available under the NOL Program to spur job creation and growth in New Jersey's current and next generation of high-skill, high-wage emerging technology industries.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The proposed amendments will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State.

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

SUBCHAPTER 12. TECHNOLOGY BUSINESS TAX CERTIFICATE TRANSFER PROGRAM

19:31-12.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement P.L. 1997, c. 334, as amended by P.L. 2009, c. 90, [and] P.L. 2010, c. 10, **P.L. 2020, c. 156, and P.L. 2021, c. 160**. This Act establishes a corporation business tax benefit certificate transfer program to assist new or expanding emerging technology and biotechnology companies in New Jersey.

19:31-12.2 Definitions

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

...

“Board” means the Board of the New Jersey Economic Development Authority, established by section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

...

“Full-time employee” means a person employed by a new or expanding emerging technology or biotechnology company on a permanent or indefinite basis for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment and 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., 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, or who renders any other standard of service generally accepted by custom or practice as full-time employment, 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., or who is employed under a formal written agreement with an institution of higher education whereby the institution's students are employed by the technology or biotechnology company on a permanent basis within a single position and in compliance with all other requirements of this definition. 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] **a health benefits plan authorized pursuant to State or federal law. “Full-time employee” 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.**

...

“Opportunity zone” means a federal population census tract in this State that was eligible to be designated as a qualified opportunity zone pursuant to 26 U.S.C. s.1400Z-1.

...

19:31-12.4 Application to the program

(a) Each application submitted by a selling business to the program shall be accompanied by a non-refundable [\$2,500] **\$1,000** application fee. Complete applications must be received by June 30 for each State fiscal year.

(b)-(c) (No change.)

(d) Applications are processed through several layers of staff review and may then be recommended for consideration and official action of the [Authority's Board of Directors at its scheduled public meeting] **Board**.

(e) (No change.)

19:31-12.5 Evaluation process

(a) (No change.)

(b)-(c) (No change.)

(d) Upon the final approval of the tax benefit by the Division of Taxation, a non-refundable fee of one percent of the amount of the final allocation of tax benefit less the application fee of \$1,000 shall be charged prior to approval by the Authority.

19:31-12.7 Allocation of tax benefits

(a) The Program is authorized to provide no more than [\$60,000,000] **\$75,000,000** of tax benefits over each State fiscal year. Of the [\$60,000,000] **\$75,000,000** of transferable tax benefits authorized for each State fiscal year [\$10,000,000] **\$15,000,000** shall be allocated exclusively among the eligible companies that operate within the boundaries of the innovation zones **or opportunity zones or for new or expanding emerging technology and biotechnology companies that are certified as a woman- or minority-owned business at the time of program application**, except as provided in (a)2ii below. In the event the total amount of transferable tax benefits approved exceeds these limitations or any subsequent limitations, the Authority shall allocate the transfer of tax benefits as follows:

1. Each company is limited to a maximum lifetime tax benefit of [\$15,000,000] **\$20,000,000**.

2. The Authority shall allocate the [\$10,000,000] **\$15,000,000** designated for eligible companies in innovation zones **or opportunity zones or for new or expanding emerging technology and biotechnology companies that are certified as a woman- or minority-owned business at the time of program application** as follows:

i. For eligible companies in innovation **zones or opportunity zones or for new or expanding emerging technology and biotechnology companies that are certified as a woman- or minority-owned business at the time of program application**, each company is eligible for an allocation of the lesser of \$250,000 or the value of their eligible benefits. After these allocations are made to these companies from the [\$10,000,000] **\$15,000,000** innovation zone/**new or expanding emerging technology and biotechnology** allocation, any remaining balance of the [\$10,000,000] **\$15,000,000** shall be apportioned among eligible companies in innovation zones with unmet eligible benefits on a pro rata basis;

ii. If, in any State fiscal year, there is an unused portion of the [\$10,000,000] **\$15,000,000** allocated exclusively for companies in innovation zones **or opportunity zones or for new or expanding emerging technology and biotechnology companies that are certified as a woman- or minority-owned business at the time of program application**, that portion shall be available for that State fiscal year for the surrender of transferable tax benefits by new and/or expanding emerging technology and biotechnology businesses that do not operate within the boundaries of an innovation zone **or that are new or expanding emerging technology and biotechnology companies that are certified as a woman- or minority-owned business at the time of program application**; and

iii. The eligible companies in innovation zones **or opportunity zones or for new or expanding emerging technology and biotechnology companies that are certified as a woman- or minority-owned business at the time of program application** with remaining unmet eligible benefits shall participate in the allocation of the remaining pool as set forth in (a)3 below.

3. The Authority shall allocate the remaining tax benefits as follows:

i.-ii. (No change.)

iii. If the total amount of benefits authorized under (a)2 and 3i and ii above exceeds [\$60,000,000] **\$75,000,000**, each applicant shall receive a lesser amount on an apportioned basis, otherwise after the dollars are set aside in the amounts provided in (a)2 and 3i and ii above, the remaining funds available to the program, in that fiscal year, shall be allocated among the businesses with more than \$250,000 of tax benefits. The available tax benefits shall be determined by reducing the amount of tax benefits to be transferred for each business by the minimum amount of tax benefits authorized for that business and then multiplying that amount by the following factor:

Numerator of Fiscal Year Dollar Authorization less Total Minimum Tax Benefits Authorized
over denominator of Total Tax Benefits Requested to be Transferred less Total Minimum Tax
Benefits Authorized.

The total minimum tax benefits authorized is the amount authorized for businesses with less than \$250,000 of tax benefits plus the minimum tax benefits authorized for businesses with more than \$250,000 of tax benefits. The total tax benefits requested to be transferred is the total amount of tax benefits requested to be transferred by all businesses.



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: December 8, 2021

SUBJECT: **WebiMax LLC (“WebiMax”)**
Grow New Jersey Assistance Program (“Grow NJ”) –
COVID-Related Termination
P #38627 (PROD-00184610)

Request:

Approve WebiMax LLC’s request to terminate its Grow NJ Incentive Agreement pursuant to the COVID-Related Relief provisions of the New Jersey Economic Recovery Act of 2020 (“ERA”), P.L.2020, c. 156.

Background:

As a service-based digital marketing company, WebiMax provides clients from small businesses to large corporations with reputation management and online marketing solutions. On December 10, 2013, the Members approved a \$12,750,000 10-year Grow NJ award to incent the creation of 100 new jobs and the retention of 50 employees with an estimated capital investment of \$400,000 at an existing 8,755 square foot office building as its Qualified Business Facility (“QBF”) located at 2 Aquarium Loop in Camden.

In November 2014, WebiMax certified project completion with 21 new jobs and the retention of 50 employees. As a result, the Grow NJ award was decreased at project certification to \$6,035,000 due to the reduced number of new jobs. The Grow NJ Agreement was amended accordingly on August 3, 2016.

WebiMax maintained the required jobs through its 2018 report and was issued Annual Tax Credit Certificates for the tax years 2014-2018 in the amounts of \$603,500, \$603,500, \$493,000, \$510,000, and \$493,000, respectively, for a total of \$2,703,000.

In November 2020, WebiMax terminated the lease for and vacated its approved QBF. The EDA was not made aware that WebiMax terminated the lease and vacated its approved QBF until the company reached out in early Spring 2021 to inquire as to how to request a COVID-related termination of its Grow NJ Incentive Agreement. Vacating the QBF is an Event of Default under Section 14(d) of the NJ Grow agreement. In addition, with no QBF, WebiMax would not be able

to meet its annual jobs obligations for the remainder of the eligibility period and is subject to the partial recapture of previously issued tax credits for each of the remaining years of eligibility. Generally, staff proceeds with termination of an Incentive Agreement and partial recapture of tax credits paid upon knowledge that a business no longer maintains its QBF. However, on June 15, 2021 WebiMax formally requested to terminate its Grow NJ Incentive Agreement due to COVID-related impacts. Staff then paused the termination process for resolution of the relief request by the Board.

As staff began to review the implications of the lease termination, WebiMax submitted its Grow NJ annual compliance reporting for tax year 2019 in July 2020, pursuant to the extension of the NJEDA 120-day reporting requirement for 2019 annual reports issued on April 2, 2020 in accordance with Executive Order 107 (Murphy 2020) on the regular operations of employers due to the COVID-19 Pandemic. The 2019 Annual Job Log contained only 46 retained employees, which is below its minimum job threshold of 56 new and retained employees. As such, WebiMax forfeited its tax credit for the 2019 tax year. WebiMax did not report its jobs for tax year 2020. Failure to report is also a default of the Incentive Agreement, which could result in a termination of the Incentive Agreement.

COVID Relief

On January 7, 2021, the ERA amended the Grow NJ statute to afford Grow NJ businesses several relief measures in recognition of the negative effects that the COVID-19 pandemic and Health Emergency restrictions may have on the businesses. To qualify for the relief, a Grow NJ business must demonstrate COVID-related impacts to the business that are the basis for the request for relief. Requests may be based on negative financial impacts to a business, as well as other changes including a decrease in workforce, a conversion of workforce to remote, real estate decisioning, and changes to business model that no longer enable the company to participate in the Grow NJ program. These measures are intended to provide flexibility to Grow NJ businesses and to ensure that they are not penalized due to the safety measures needed to respond to the COVID-19 Health Emergency.

Specifically, Section 108(g) of P.L. 2020, c. 156 amended the Grow NJ law to allow businesses to terminate Grow NJ Incentive Agreements “provided that the business shall submit a certification from the business's chief executive officer or equivalent officer stating that the termination is due to the public health emergency and describing the impact of the public health emergency on the business.” A termination under this provision results in the forfeiture of all tax credits for the tax period in which the termination occurs and all subsequent tax periods. Any requested but uncertified or unissued tax credits would also be forfeited as a result of the termination. Tax credits issued for previous years may be retained by the business without recapture while the business is relieved of all ongoing reporting obligations. To guard against misrepresentation by businesses, termination letters executed under the COVID-Related Relief provisions will include a provision allowing EDA to seek recapture of any tax credits issued should it be determined that the Grow NJ business decisioning was made without consideration of the impact of the COVID-19 Health Emergency on the business.

Because the termination provision under section 108(g) of the ERA is prospective, EDA Staff developed a policy that businesses with defaults prior to the enactment of the ERA should not be able to avail themselves of the ERA's COVID termination. However, upon further consideration, for pre-ERA defaults that staff determines are the result of commercially reasonable responses to COVID-related impacts, staff decided that it would support COVID-related Termination relief with no recapture.

WebiMax's COVID-19 Impacts and Decisioning

WebiMax incurred a significant decline in revenues due to COVID-19. Advertising costs for most businesses is a discretionary cost and due to the unpredictable economy and uncertainty caused by the COVID-19 Public Health Emergency, many of businesses have put marketing plans on hold either as they re-evaluate business models and the best strategy for these services or because they felt the need to limit any unnecessary spending over the last year or so.

In response to Governor Murphy's Executive Order 107 on March 21, 2020 mandating that all non-essential businesses in New Jersey implement work-from-home arrangements, WebiMax required employees to work from home. Since that time, WebiMax has maintained its remote work policy. Since March 2020, WebiMax informed staff that its full-time employment has also decreased from 41 to 36 employees due to attrition.

Of its current 36 full-time employees, 33 were verified against NJDOL records to be New Jersey residents working within the state. WebiMax has no current plans to open an office for its operations and anticipates an inability to meet the terms of the Grow NJ Incentive Agreement.

As the pandemic brought forth financial uncertainty, WebiMax evaluated options to decrease operating costs, such as space and staff decreases. WebiMax determined to keep its staff and explored whether it could renegotiate the size of the QBF with the Landlord and what cost savings could result. Discussions with the Landlord instead led to an agreement to terminate the lease that was to end May 31, 2025. Per the lease termination agreement, WebiMax agreed to vacate the premises in November 2020.

Staff has concluded that although the lease of its QBF was terminated it was done so as a commercially reasonable response to the impacts WebiMax suffered as a result of the COVID-19 Public Health Emergency.

Recommendation:

Approve WebiMax LLC's request to terminate its Grow NJ Incentive Agreement pursuant to the COVID-Related Relief provisions of the New Jersey Economic Recovery Act of 2020 (ERA), P.L.2020, c. 156.



Tim Sullivan, CEO

Prepared: Marc Tomasini

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY – FILM TAX CREDIT PROGRAM**

As created under the Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56, the New Jersey Film and Digital Media Tax Credit Program provides a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content in New Jersey. Under the Film Tax Credit Program, applicants are eligible for a tax credit equal to 30% of qualified film production expenses, or 35% of qualified film production expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.

As amended by law on 7/2/2021, the eligible tax credit for qualified film production expenses increased from 30% to 35% for applications received after Jan 7, 2021. Additionally, for applications received after July 2, 2021, the program amendment also eliminates the targeted county bonus and specifies a tax credit of 30% for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New, York.

APPLICANT: ASATMU The Film, Inc.

PROD-00258777

APPLICANT BACKGROUND:

ASATMU The Film, Inc. is the production company responsible for “As Sick As They Made Us”. The drama follows a divorced mom who tries to make peace with her dysfunctional family as she finds a second chance at love.

The film content has been reviewed and recommended for approval under the Act by the New Jersey Motion Picture and Television Commission. The Commission has determined that the film shall include, at no cost to the State, marketing materials promoting the State, including the placement of a logo in the end credits of the film.

ELIGIBILITY AND TAX CREDIT CALCULATION:

As part of eligibility for tax credits under the New Jersey Film Tax Credit Program, a film must meet at least one of two expense eligibility thresholds:

1. Total Film Production Expenses: A minimum of 60% of the film’s total production expenses (calculated excluding post-production expenses) must be incurred after July 1, 2018 but before July 1, 2023 for services performed and goods purchased through vendors authorized to do business in New Jersey. The following film production expenses are projected by the applicant.

| | |
|---|----------------|
| A. Total Film Production Expenses | \$3,568,995.00 |
| B. Total Post-Production Expenses | \$125,400 |
| C. Total expenses for services performed and goods purchased through vendors authorized to do business in New Jersey (excluding any post-production expenses) | \$3,227,645 |

| | |
|------------------------------------|------------|
| Percentage Calculation = $C/(A-B)$ | 94 % |
| Criterion Met | Yes |

2. **Qualified Film Production Expenses:** During a single privilege period, the film must have more than \$1 million in qualified film production expenses. “Qualified film production expenses” are expenses incurred in New Jersey after July 1, 2018 for the production of a film, including pre-production costs and post-production costs. “Qualified film production expenses” shall include, but shall not limited to: wages and salaries of individuals employed in the production of a film on which the New Jersey Gross Income Tax has been paid or is due; and, the costs for tangible personal property used and services performed in New Jersey, directly and exclusively in the production of the film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payments made to a loan out company or to an independent contractor shall not be a “qualified film production expenses” unless the payments are made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by N.J.A.C. 19:31-21.3(c). “Qualified film production expenses” shall not include: expenses incurred in marketing or advertising a film; and payment in excess of \$500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines. The following qualified film production expenses are projected by the applicant to be incurred in New Jersey:

| | |
|--|-------------|
| Qualified Film Production Expenses incurred in NJ during a single privilege period after July 1, 2018. | \$3,227,645 |
| Criterion Met | Yes |

AWARD CALCULATION

| Base Award Criteria | Calculation | Result |
|--|-----------------------------|-----------------------|
| 35% of Qualified Film Production Expenses | $\$3,227,645 \times 35\% =$ | \$1,129,675.75 |
| | | |
| Bonus Criteria Met | | |
| Submission of Diversity Plan deemed satisfactory by EDA and NJ Taxation. 2% of Qualified Film Production Expenses. | $\$3,227,645 \times 2\% =$ | \$64,552.90 |
| Total Award | | \$1,194,228.65 |

| | |
|--|------------------------|
| APPLICATION RECEIVED DATE: | 5/21/2021 |
| DATE APPLICATION DEEMED COMPLETE: | 6/7/2021 |
| PRINCIPAL PHOTOGRAPHY COMMENCEMENT: | 6/7/2021 |
| PRINCIPAL NJ PHOTOGRAPHY LOCATION: | Wood-ridge Borough, NJ |
| ESTIMATED DATE OF PROJECT COMPLETION: | 7/2/2021 |
| APPLICANT'S FISCAL YEAR END: | 12/31/2021 |
| TAX CREDIT VINTAGE YEAR(S): | 2021 |
| TAX FILING TYPE: | Corporate Business Tax |
| ANTICIPATED CERTIFICATION DATE: | 12/31/2021 |

In general, the final documentation shall be submitted to the Authority no later than four years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 and three years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to the N.J.S.A. 54A:1-1 et seq.

The Garden State Film and Digital Media Jobs Act originally provided a total of \$75 million in tax credits for State Fiscal Year 2019 and increased to \$100 million as amended by law on 1/21/2020. As a result, \$100 million of film tax credits are available for State Fiscal Year 2022. After today's approvals, \$634,000 remains in the program for State Fiscal Year 2022. However, there are 23 additional applications in the pipeline totaling \$66.23 million and therefore being over-subscribed for State Fiscal Year 2022.

APPROVAL REQUEST:

The Members of the Authority are asked to initially approve the proposed award to the applicant under the New Jersey Film and Digital Media Tax Credit Program. The recommended tax credit is contingent upon receipt by the Authority of evidence that the applicant has met certain criteria to substantiate the recommended award, and is subject to final approval by the Authority and the Division of Taxation. Staff may issue the Authority's final approval if the criteria met by the company is consistent with that shown herein. If the criteria met by the company differs from that shown herein, Staff may lower the tax credit amount to reflect what corresponds to the actual criteria that have been met.

APPROVAL OFFICER: M. Bhatia

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY – FILM TAX CREDIT PROGRAM**

As created under the Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56, the New Jersey Film and Digital Media Tax Credit Program provides a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content in New Jersey. Under the Film Tax Credit Program, applicants are eligible for a tax credit equal to 30% of qualified film production expenses, or 35% of qualified film production expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.

As amended by law on 7/2/2021, the eligible tax credit for qualified film production expenses increased from 30% to 35% for applications received after Jan 7, 2021. Additionally, for applications received after July 2, 2021, the program amendment also eliminates the targeted county bonus and specifies a tax credit of 30% for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New, York.

APPLICANT: The Perfect Movie Productions, LLC

PROD-00276150

APPLICANT BACKGROUND:

The Perfect Movie Productions, LLC is the production company responsible for “The Perfect Find”. The movie is a romantic comedy that follows Will - a forty-year-old woman with everything on the line – her high-stakes career, ticking biological clock, bank account – risk it all for a lusty secret romance with the one person who could destroy her comeback.

The film content has been reviewed and recommended for approval under the Act by the New Jersey Motion Picture and Television Commission. The Commission has determined that the film shall include, at no cost to the State, marketing materials promoting the State, including the placement of a logo in the end credits of the film.

ELIGIBILITY AND TAX CREDIT CALCULATION:

As part of eligibility for tax credits under the New Jersey Film Tax Credit Program, a film must meet at least one of two expense eligibility thresholds:

1. Total Film Production Expenses: A minimum of 60% of the film’s total production expenses (calculated excluding post-production expenses) must be incurred after July 1, 2018 but before July 1, 2023 for services performed and goods purchased through vendors authorized to do business in New Jersey. The following film production expenses are projected by the applicant.

| | |
|-----------------------------------|-----------------|
| A. Total Film Production Expenses | \$24,076,725.00 |
| B. Total Post-Production Expenses | \$1,562,236.00 |

| | |
|---|-----------------|
| C. Total expenses for services performed and goods purchased through vendors authorized to do business in New Jersey (excluding any post-production expenses) | \$17,528,450.00 |
| Percentage Calculation = C/(A-B) | 78 % |
| Criterion Met | Yes |

2. **Qualified Film Production Expenses:** During a single privilege period, the film must have more than \$1 million in qualified film production expenses. "Qualified film production expenses" are expenses incurred in New Jersey after July 1, 2018 for the production of a film, including pre-production costs and post-production costs. "Qualified film production expenses" shall include, but shall not limited to: wages and salaries of individuals employed in the production of a film on which the New Jersey Gross Income Tax has been paid or is due; and, the costs for tangible personal property used and services performed in New Jersey, directly and exclusively in the production of the film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payments made to a loan out company or to an independent contractor shall not be a "qualified film production expenses" unless the payments are made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by N.J.A.C. 19:31-21.3(c). "Qualified film production expenses" shall not include: expenses incurred in marketing or advertising a film; and payment in excess of \$500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines. The following qualified film production expenses are projected by the applicant to be incurred in New Jersey:

| | |
|--|-----------------|
| Qualified Film Production Expenses incurred in NJ during a single privilege period after July 1, 2018. | \$16,081,149.00 |
| Criterion Met | Yes |

AWARD CALCULATION

| Base Award Criteria | Calculation | Result |
|--|----------------------|-----------------------|
| 35% of Qualified Film Production Expenses | \$16,081,149 x 35% = | \$5,628,402.15 |
| | | |
| Bonus Criteria Met | | |
| Submission of Diversity Plan deemed satisfactory by EDA and NJ Taxation. 2% of Qualified Film Production Expenses. | \$16,081,149 x 2% = | \$321,622.98 |
| Total Award | | \$5,950,025.13 |

| | |
|--|------------------------|
| APPLICATION RECEIVED DATE: | 6/3/2021 |
| DATE APPLICATION DEEMED COMPLETE: | 6/21/2021 |
| PRINCIPAL PHOTOGRAPHY COMMENCEMENT: | 6/21/2021 |
| PRINCIPAL NJ PHOTOGRAPHY LOCATION: | Newark, NJ |
| ESTIMATED DATE OF PROJECT COMPLETION: | 7/27/2021 |
| APPLICANT'S FISCAL YEAR END: | 12/31/2021 |
| TAX CREDIT VINTAGE YEAR(S): | 2021 |
| TAX FILING TYPE: | Corporate Business Tax |

ANTICIPATED CERTIFICATION DATE:

03/31/2022

In general, the final documentation shall be submitted to the Authority no later than four years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 and three years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to the N.J.S.A. 54A:1-1 et seq.

The Garden State Film and Digital Media Jobs Act originally provided a total of \$75 million in tax credits for State Fiscal Year 2019 and increased to \$100 million as amended by law on 1/21/2020. As a result, \$100 million of film tax credits are available for State Fiscal Year 2022. After today's approvals, \$634,000 remains in the program for State Fiscal Year 2022. However, there are 23 additional applications in the pipeline totaling \$66.23 million and therefore being over-subscribed for State Fiscal Year 2022.

APPROVAL REQUEST:

The Members of the Authority are asked to initially approve the proposed award to the applicant under the New Jersey Film and Digital Media Tax Credit Program. The recommended tax credit is contingent upon receipt by the Authority of evidence that the applicant has met certain criteria to substantiate the recommended award, and is subject to final approval by the Authority and the Division of Taxation. Staff may issue the Authority's final approval if the criteria met by the company is consistent with that shown herein. If the criteria met by the company differs from that shown herein, Staff may lower the tax credit amount to reflect what corresponds to the actual criteria that have been met.

APPROVAL OFFICER: M. Bhatia

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY – FILM TAX CREDIT PROGRAM**

As created under the Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56, the New Jersey Film and Digital Media Tax Credit Program provides a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content in New Jersey. Under the Film Tax Credit Program, applicants are eligible for a tax credit equal to 30% of qualified film production expenses, or 35% of qualified film production expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.

As amended by law on 7/2/2021, the eligible tax credit for qualified film production expenses increased from 30% to 35% for applications received after Jan 7, 2021. Additionally, for applications received after July 2, 2021, the program amendment also eliminates the targeted county bonus and specifies a tax credit of 30% for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New, York.

APPLICANT: Lucky 8 TV LLC

PROD-00258514

APPLICANT BACKGROUND:

Lucky 8 TV LLC is the production company responsible for “Empires of Excess”, a hybrid-scripted docu-series that tells the story of the business titans of vice in America - booze, tobacco, gambling and sex. From Anheuser-Busch to Jack Daniels, American Spirits to Marlboros, Durex to Trojans – see the surprising ways in which America's bad habits built the country we know today.

The film content has been reviewed and recommended for approval under the Act by the New Jersey Motion Picture and Television Commission. The Commission has determined that the film shall include, at no cost to the State, marketing materials promoting the State, including the placement of a logo in the end credits of the film.

ELIGIBILITY AND TAX CREDIT CALCULATION:

As part of eligibility for tax credits under the New Jersey Film Tax Credit Program, a film must meet at least one of two expense eligibility thresholds:

1. Total Film Production Expenses: A minimum of 60% of the film’s total production expenses (calculated excluding post-production expenses) must be incurred after July 1, 2018 but before July 1, 2023 for services performed and goods purchased through vendors authorized to do business in New Jersey. The following film production expenses are projected by the applicant.

| | |
|-----------------------------------|-------------|
| A. Total Film Production Expenses | \$3,011,026 |
|-----------------------------------|-------------|

| | |
|---|-------------|
| B. Total Post-Production Expenses | \$0 |
| C. Total expenses for services performed and goods purchased through vendors authorized to do business in New Jersey (excluding any post-production expenses) | \$3,011,026 |
| Percentage Calculation = $C/(A-B)$ | 100% |
| Criterion Met | Yes |

2. Qualified Film Production Expenses: During a single privilege period, the film must have more than \$1 million in qualified film production expenses. “Qualified film production expenses” are expenses incurred in New Jersey after July 1, 2018 for the production of a film, including pre-production costs and post-production costs. “Qualified film production expenses” shall include, but shall not be limited to: wages and salaries of individuals employed in the production of a film on which the New Jersey Gross Income Tax has been paid or is due; and, the costs for tangible personal property used and services performed in New Jersey, directly and exclusively in the production of the film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payments made to a loan out company or to an independent contractor shall not be a “qualified film production expenses” unless the payments are made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by N.J.A.C. 19:31-21.3(c). “Qualified film production expenses” shall not include: expenses incurred in marketing or advertising a film; and payment in excess of \$500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines. The following qualified film production expenses are projected by the applicant to be incurred in New Jersey:

| | |
|--|-------------|
| Total Qualified Film Production Expenses incurred in NJ in two privilege periods, of which at least \$1 million is incurred in a single privilege period after July 1, 2018. | \$3,011,026 |
| Criterion Met | Yes |

AWARD CALCULATION

| Base Award Criteria | Calculation | Result |
|--|-----------------------------|-----------------------|
| 35% of Qualified Film Production Expenses | $\$3,011,026 \times 35\% =$ | \$1,053,859.10 |
| Bonus Criteria Met | | |
| Submission of Diversity Plan deemed satisfactory by EDA and NJ Taxation. 2% of Qualified Film Production Expenses. | $\$3,011,026 \times 2\% =$ | \$60,220.52 |
| Total Award | | \$1,114,079.62 |

| | |
|--|--------------------------------------|
| APPLICATION RECEIVED DATE: | 5/11/2021 (Application #220160) |
| DATE APPLICATION DEEMED COMPLETE: | 6/2/2021 |
| PRINCIPAL PHOTOGRAPHY COMMENCEMENT: | 7/5/2021 |
| PRINCIPAL NJ PHOTOGRAPHY LOCATION: | Little Falls, NJ |
| ESTIMATED DATE OF PROJECT COMPLETION: | 12/31/2021 |
| APPLICANT'S FISCAL YEAR END: | 12/31/2021 |
| TAX CREDIT VINTAGE YEAR(S): | 2022 |
| TAX FILING TYPE: | New Jersey Corporate Business Tax |
| ANTICIPATED CERTIFICATION DATE: | 4/1/2022 |

In general, the final documentation shall be submitted to the Authority no later than four years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 and three years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to the N.J.S.A. 54A:1-1 et seq.

The Garden State Film and Digital Media Jobs Act originally provided a total of \$75 million in tax credits for State Fiscal Year 2019 and increased to \$100 million as amended by law on 1/21/2020. As a result, \$100 million of film tax credits are available for State Fiscal Year 2022. After today's approvals, \$634,000 remains in the program for State Fiscal Year 2022. However, there are 23 additional applications in the pipeline totaling \$66.23 million and therefore being over-subscribed for State Fiscal Year 2022.

APPROVAL REQUEST:

The Members of the Authority are asked to initially approve the proposed award to the applicant under the New Jersey Film and Digital Media Tax Credit Program. The recommended tax credit is contingent upon receipt by the Authority of evidence that the applicant has met certain criteria to substantiate the recommended award, and is subject to final approval by the Authority and the Division of Taxation. Staff may issue the Authority's final approval if the criteria met by the company is consistent with that shown herein. If the criteria met by the company differs from that shown herein, Staff may lower the tax credit amount to reflect what corresponds to the actual criteria that have been met.

APPROVAL OFFICER: Dan Madden

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY – FILM TAX CREDIT PROGRAM**

As created under the Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56, the New Jersey Film and Digital Media Tax Credit Program provides a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content in New Jersey. Under the Film Tax Credit Program, applicants are eligible for a tax credit equal to 30% of qualified film production expenses, or 35% of qualified film production expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.

As amended by law on 7/2/2021, the eligible tax credit for qualified film production expenses increased from 30% to 35% for applications received after Jan 7, 2021. Additionally, for applications received after July 2, 2021, the program amendment also eliminates the targeted county bonus and specifies a tax credit of 30% for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New, York.

APPLICANT: ABC Signature NJ, LLC

PROD-00187847

APPLICANT BACKGROUND:

ABC Signature NJ, LLC is the production company responsible for “Emergence Season 1”. Alexa Swinton stars in a character-driven thriller that centers around a sheriff who takes in a young child that she finds near the site of a mysterious accident who has no memory of what has happened. The investigation draws her into a conspiracy larger than she ever imagined, and the child’s identity is at the center of it all.

The film content has been reviewed and recommended for approval under the Act by the New Jersey Motion Picture and Television Commission. The Commission has determined that the film shall include, at no cost to the State, marketing materials promoting the State, including the placement of a logo in the end credits of the film.

ELIGIBILITY AND TAX CREDIT CALCULATION:

As part of eligibility for tax credits under the New Jersey Film Tax Credit Program, a film must meet at least one of two expense eligibility thresholds:

1. Total Film Production Expenses: A minimum of 60% of the film’s total production expenses (calculated excluding post-production expenses) must be incurred after July 1, 2018 but before July 1, 2023 for services performed and goods purchased through vendors authorized to do business in New Jersey. The following film production expenses are projected by the applicant.

| | |
|---|--------------|
| A. Total Film Production Expenses | \$64,013,856 |
| B. Total Post-Production Expenses | \$7,116,336 |
| C. Total expenses for services performed and goods purchased through vendors authorized to do business in New Jersey (excluding any post-production expenses) | \$1,359,948 |
| Percentage Calculation = C/(A-B) | 2.39% |

| Criterion Met | No |
|---|----|
| <p>2. <u>Qualified Film Production Expenses</u>: During a single privilege period, the film must have more than \$1 million in qualified film production expenses. “Qualified film production expenses” are expenses incurred in New Jersey after July 1, 2018 for the production of a film, including pre-production costs and post-production costs. “Qualified film production expenses” shall include, but shall not limited to: wages and salaries of individuals employed in the production of a film on which the New Jersey Gross Income Tax has been paid or is due; and, the costs for tangible personal property used and services performed in New Jersey, directly and exclusively in the production of the film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payments made to a loan out company or to an independent contractor shall not be a “qualified film production expenses” unless the payments are made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by N.J.A.C. 19:31-21.3(c). “Qualified film production expenses” shall not include: expenses incurred in marketing or advertising a film; and payment in excess of \$500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines. The following qualified film production expenses are projected by the applicant to be incurred in New Jersey:</p> | |

| | |
|--|--------------|
| Qualified Film Production Expenses incurred in NJ during a single privilege period after July 1, 2018. | \$43,867,437 |
| Criterion Met | Yes |

AWARD CALCULATION

| Base Award Criteria | Calculation | Result |
|---|------------------------------|------------------------|
| 30% of Qualified Film Production Expenses | $\$43,867,437 \times 30\% =$ | \$13,160,231.10 |
| Bonus Criteria Met | | |
| Submission of Diversity Plan deemed satisfactory by EDA and NJ Taxation. 2% of Qualified Film Production Expenses. | $\$43,867,437 \times 2\% =$ | \$877,348.74 |
| 5% of Qualified Film Production Expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County. | $\$0 \times 5\% =$ | \$0 |
| Total Award | | \$14,037,579.84 |

APPLICATION RECEIVED DATE:

8/16/2019 (Application #25)

DATE APPLICATION DEEMED COMPLETE:

11/9/2020

PRINCIPAL PHOTOGRAPHY COMMENCEMENT:

7/22/2019

PRINCIPAL NJ PHOTOGRAPHY LOCATION:

Secaucus Town

ESTIMATED DATE OF PROJECT COMPLETION:

12/6/2019

| | |
|--|------------------------|
| APPLICANT'S FISCAL YEAR END: | 9/30/2021 |
| TAX CREDIT VINTAGE YEAR(S): | 2021 |
| TAX FILING TYPE: | Corporate Business Tax |
| ANTICIPATED CERTIFICATION DATE: | 4/30/2021 |

In general, the final documentation shall be submitted to the Authority no later than four years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 and three years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to the N.J.S.A. 54A:1-1 et seq.

The Garden State Film and Digital Media Jobs Act originally provided a total of \$75 million in tax credits for State Fiscal Year 2019 and increased to \$100 million as amended by law on 1/21/2020. As a result, \$100 million of film tax credits are available for State Fiscal Year 2022. After today's approvals, \$634,000 remains in the program for State Fiscal Year 2022. However, there are 23 additional applications in the pipeline totaling \$66.23 million and therefore being over-subscribed for State Fiscal Year 2022.

APPROVAL REQUEST:

The Members of the Authority are asked to initially approve the proposed award to the applicant under the New Jersey Film and Digital Media Tax Credit Program. The recommended tax credit is contingent upon receipt by the Authority of evidence that the applicant has met certain criteria to substantiate the recommended award and is subject to final approval by the Authority and the Division of Taxation. Staff may issue the Authority's final approval if the criteria met by the company is consistent with that shown herein. If the criteria met by the company differs from that shown herein, Staff may lower the tax credit amount to reflect what corresponds to the actual criteria that have been met.

APPROVAL OFFICER: M. Bhatia

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY PROJECT SUMMARY – FILM TAX CREDIT PROGRAM

As created under the Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56, the New Jersey Film and Digital Media Tax Credit Program provides a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content in New Jersey. Under the Film Tax Credit Program, applicants are eligible for a tax credit equal to 30% of qualified film production expenses, or 35% of qualified film production expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.

As amended by law on 7/2/2021, the eligible tax credit for qualified film production expenses increased from 30% to 35% for applications received after Jan 7, 2021. Additionally, for applications received after July 2, 2021, the program amendment also eliminates the targeted county bonus and specifies a tax credit of 30% for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New, York.

APPLICANT: Pacific 2.1 Entertainment Group, Inc.

PROD-00258148

APPLICANT BACKGROUND:

Pacific 2.1 Entertainment Group, Inc. is the production company responsible for “Wu Tang: An American Saga Season 2.” The show tracks the formation of the Wu-Tang Clan, an American hip hop group formed in Staten Island, New York.

The film content has been reviewed and recommended for approval under the Act by the New Jersey Motion Picture and Television Commission. The Commission has determined that the film shall include, at no cost to the State, marketing materials promoting the State, including the placement of a logo in the end credits of the film.

ELIGIBILITY AND TAX CREDIT CALCULATION:

As part of eligibility for tax credits under the New Jersey Film Tax Credit Program, a film must meet at least one of two expense eligibility thresholds:

1. **Total Film Production Expenses:** A minimum of 60% of the film’s total production expenses (calculated excluding post-production expenses) must be incurred after July 1, 2018 but before July 1, 2023 for services performed and goods purchased through vendors authorized to do business in New Jersey. The following film production expenses are projected by the applicant.

| | |
|---|--------------|
| A. Total Film Production Expenses | \$80,155,716 |
| B. Total Post-Production Expenses | \$7,200,290 |
| C. Total expenses for services performed and goods purchased through vendors authorized to do business in New Jersey (excluding any post-production expenses) | \$58,943,433 |
| Percentage Calculation = C/(A-B) | 80.79% |
| Criterion Met | Yes |

2. **Qualified Film Production Expenses:** During a single privilege period, the film must have more than \$1 million in qualified film production expenses. "Qualified film production expenses" are expenses incurred in New Jersey after July 1, 2018 for the production of a film, including pre-production costs and post-production costs. "Qualified film production expenses" shall include, but shall not be limited to: wages and salaries of individuals employed in the production of a film on which the New Jersey Gross Income Tax has been paid or is due; and, the costs for tangible personal property used and services performed in New Jersey, directly and exclusively in the production of the film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payments made to a loan out company or to an independent contractor shall not be a "qualified film production expenses" unless the payments are made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by N.J.A.C. 19:31-21.3(c). "Qualified film production expenses" shall not include: expenses incurred in marketing or advertising a film; and payment in excess of \$500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines. The following qualified film production expenses are projected by the applicant to be incurred in New Jersey:

| | |
|--|--------------|
| Qualified Film Production Expenses incurred in NJ during a single privilege period after July 1, 2018. | \$58,958,433 |
| Criterion Met | Yes |

AWARD CALCULATION

| Base Award Criteria | Calculation | Result |
|--|----------------------|-----------------------|
| 35% of Qualified Film Production Expenses | \$58,958,433 x 35% = | \$20,635,451.60 |
| | | |
| Bonus Criteria Met | | |
| Submission of Diversity Plan deemed satisfactory by EDA and NJ Taxation. 2% of Qualified Film Production Expenses. | \$58,958,433 x 2% = | \$1,179,168.66 |
| Total Award | | \$21,814,620.2 |

| | |
|--|------------------------|
| APPLICATION RECEIVED DATE: | 2/5/2021 |
| DATE APPLICATION DEEMED COMPLETE: | 5/26/2021 |
| PRINCIPAL PHOTOGRAPHY COMMENCEMENT: | 2/8/2021 |
| PRINCIPAL NJ PHOTOGRAPHY LOCATION: | Kearny Town, NJ |
| ESTIMATED DATE OF PROJECT COMPLETION: | 6/16/2021 |
| APPLICANT'S FISCAL YEAR END: | 9/30/2021 |
| TAX CREDIT VINTAGE YEAR(S): | 2021 |
| TAX FILING TYPE: | Corporate Business Tax |
| ANTICIPATED CERTIFICATION DATE: | 4/15/2022 |

In general, the final documentation shall be submitted to the Authority no later than four years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 and three years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to the N.J.S.A. 54A:1-1 et seq.

The Garden State Film and Digital Media Jobs Act originally provided a total of \$75 million in tax credits for State Fiscal Year 2019 and increased to \$100 million as amended by law on 1/21/2020. As a result, \$100 million of film tax credits are available for State Fiscal Year 2022. After today's approvals, \$634,000 remains in the program for State Fiscal Year 2022. However, there are 23 additional applications in the pipeline totaling \$66.23 million and therefore being over-subscribed for State Fiscal Year 2022.

APPROVAL REQUEST:

The Members of the Authority are asked to initially approve the proposed award to the applicant under the New Jersey Film and Digital Media Tax Credit Program. The recommended tax credit is contingent upon receipt by the Authority of evidence that the applicant has met certain criteria to substantiate the recommended award and is subject to final approval by the Authority and the Division of Taxation. Staff may issue the Authority's final approval if the criteria met by the company is consistent with that shown herein. If the criteria met by the company differs from that shown herein, Staff may lower the tax credit amount to reflect what corresponds to the actual criteria that have been met.

APPROVAL OFFICER: M. Bhatia

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY – FILM TAX CREDIT PROGRAM**

As created under the Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56, the New Jersey Film and Digital Media Tax Credit Program provides a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content in New Jersey. Under the Film Tax Credit Program, applicants are eligible for a tax credit equal to 30% of qualified film production expenses, or 35% of qualified film production expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.

As amended by law on 7/2/2021, the eligible tax credit for qualified film production expenses increased from 30% to 35% for applications received after Jan 7, 2021. Additionally, for applications received after July 2, 2021, the program amendment also eliminates the targeted county bonus and specifies a tax credit of 30% for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New, York.

APPLICANT: PS203 New Jersey Inc

PROD-00258545

APPLICANT BACKGROUND:

PS203 New Jersey Inc. is the production company responsible for ‘Spinning Gold’. The biographical biopic follows the professional and personal roller coaster life of American record executive Neil Bogart and his journey of creating and building up Casablanca Records. The story goes back in time to provide flashback to track Neil’s meteoric rise from poverty in the Brooklyn Projects to discovering some of the biggest music performers of the 60s and 70s.

The film content has been reviewed and recommended for approval under the Act by the New Jersey Motion Picture and Television Commission. The Commission has determined that the film shall include, at no cost to the State, marketing materials promoting the State, including the placement of a logo in the end credits of the film.

ELIGIBILITY AND TAX CREDIT CALCULATION:

As part of eligibility for tax credits under the New Jersey Film Tax Credit Program, a film must meet at least one of two expense eligibility thresholds:

1. Total Film Production Expenses: A minimum of 60% of the film’s total production expenses (calculated excluding post-production expenses) must be incurred after July 1, 2018 but before July 1, 2023 for services performed and goods purchased through vendors authorized to do business in New Jersey. The following film production expenses are projected by the applicant.

| | |
|---|--------------|
| A. Total Film Production Expenses | \$12,190,471 |
| B. Total Post-Production Expenses | \$1,263,282 |
| C. Total expenses for services performed and goods purchased through vendors authorized to do business in New Jersey (excluding any post-production expenses) | \$9,643,385 |
| Percentage Calculation = C/(A-B) | 88.25% |
| Criterion Met | Yes |

2. **Qualified Film Production Expenses:** During a single privilege period, the film must have more than \$1 million in qualified film production expenses. “Qualified film production expenses” are expenses incurred in New Jersey after July 1, 2018 for the production of a film, including pre-production costs and post-production costs. “Qualified film production expenses” shall include, but shall not be limited to: wages and salaries of individuals employed in the production of a film on which the New Jersey Gross Income Tax has been paid or is due; and, the costs for tangible personal property used and services performed in New Jersey, directly and exclusively in the production of the film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payments made to a loan out company or to an independent contractor shall not be a “qualified film production expenses” unless the payments are made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by N.J.A.C. 19:31-21.3(c). “Qualified film production expenses” shall not include: expenses incurred in marketing or advertising a film; and payment in excess of \$500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines. The following qualified film production expenses are projected by the applicant to be incurred in New Jersey:

| | |
|--|-------------|
| Qualified Film Production Expenses incurred in NJ during a single privilege period after July 1, 2018. | \$9,643,385 |
| Criterion Met | Yes |

AWARD CALCULATION

| Base Award Criteria | Calculation | Result |
|--|---------------------|-----------------------|
| 35% of Qualified Film Production Expenses | \$9,643,385 x 35% = | \$3,375,184.75 |
| | | |
| Bonus Criteria Met | | |
| Submission of Diversity Plan deemed satisfactory by EDA and NJ Taxation. 2% of Qualified Film Production Expenses. | \$9,643,385 x 2% = | \$192,867.70 |
| | | |
| Total Award | | \$3,568,052.45 |

| | |
|--|------------------------|
| APPLICATION RECEIVED DATE: | 5/17/2021 |
| DATE APPLICATION DEEMED COMPLETE: | 6/9/2021 |
| PRINCIPAL PHOTOGRAPHY COMMENCEMENT: | 6/1/2021 |
| PRINCIPAL NJ PHOTOGRAPHY LOCATION: | Kearny Town, NJ |
| ESTIMATED DATE OF PROJECT COMPLETION: | 6/22/2021 |
| APPLICANT’S FISCAL YEAR END: | 12/31/2021 |
| TAX CREDIT VINTAGE YEAR(S): | 2021 |
| TAX FILING TYPE: | Corporate Business Tax |
| ANTICIPATED CERTIFICATION DATE: | 5/31/2022 |

In general, the final documentation shall be submitted to the Authority no later than four years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 and three years after the Authority's initial approval if the taxpayer is seeking a credit against

the tax imposed pursuant to the N.J.S.A. 54A:1-1 et seq.

The Garden State Film and Digital Media Jobs Act originally provided a total of \$75 million in tax credits for State Fiscal Year 2019 and increased to \$100 million as amended by law on 1/21/2020. As a result, \$100 million of film tax credits are available for State Fiscal Year 2022. After today's approvals, \$634,000 remains in the program for State Fiscal Year 2022. However, there are 23 additional applications in the pipeline totaling \$66.23 million and therefore being over-subscribed for State Fiscal Year 2022.

APPROVAL REQUEST:

The Members of the Authority are asked to initially approve the proposed award to the applicant under the New Jersey Film and Digital Media Tax Credit Program. The recommended tax credit is contingent upon receipt by the Authority of evidence that the applicant has met certain criteria to substantiate the recommended award and is subject to final approval by the Authority and the Division of Taxation. Staff may issue the Authority's final approval if the criteria met by the company is consistent with that shown herein. If the criteria met by the company differs from that shown herein, Staff may lower the tax credit amount to reflect what corresponds to the actual criteria that have been met.

APPROVAL OFFICER: K. Mironova

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY – DIGITAL MEDIA TAX CREDIT PROGRAM**

As created under the Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56, the New Jersey Film and Digital Media Tax Credit Program provides a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content in New Jersey. Under the Digital Media Tax Credit Program, applicants are eligible for a tax credit equal to 20% of qualified digital media content expenses, or 25% of qualified digital media content expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.

APPLICANT: Malka Media Group LLC

PROD-00257886

APPLICANT BACKGROUND:

MALKA Media Group is a diversified media company headquartered in Jersey City that produces documentaries, shows and podcasts, develops ad campaigns and creates content across every visual medium. MALKA Media brings together the best of a film studio, VFX shop, animation house, design group, post-production facility, physical production studio, advertising agency, and digital marketing team to produce creative content for brands at speed and on budget.

ELIGIBILITY AND TAX CREDIT CALCULATION:

As part of eligibility for tax credits under the New Jersey Digital Media Tax Credit Program, an applicant must meet the statutory and regulatory definition of Digital media content. Digital media content is any data or information that is produced in digital form, including data or information created in analog form but reformatted in digital form, text, graphics, photographs, animation, sound and video content.

Malka Media produces documentaries, shows and podcasts, develops ad campaigns and creates content across every visual medium. MALKA Media brings together the best of a film studio, VFX shop, animation house, design group, post-production facility, physical production studio, advertising agency, and digital marketing team to produce creative content for brands at speed and on budget.

As part of eligibility for tax credits under the New Jersey Digital Media Tax Credit Program, an applicant must meet two expense eligibility thresholds:

1. Percentage of the qualified digital media content production expenses for wages: A minimum of 50% of the qualified digital media content production expenses of the taxpayer are for wages and salaries paid to full-time or full-time equivalent employees in New Jersey;

| | |
|---|-------------|
| A. Total Qualified Digital Media Content Production Expenses after July 1, 2018 | \$4,454,524 |
| B. Wages Paid to Employees in New Jersey | \$4,110,413 |
| C. Percentage of the qualified digital media content production expenses incurred for wages in New Jersey | 92.27% |
| Criterion Met | Yes |

2. Total Digital Media Content Production Expenses: A minimum of \$2,000,000 of qualified digital media content production expenses. “Qualified digital media content production expenses” are

expenses incurred in New Jersey after July 1, 2018 but before July 1, 2034 for services performed and goods purchased through vendors authorized to do business in New Jersey. "Qualified digital media content production expenses" shall include but shall not be limited to: wages and salaries of individuals employed in the production of digital media content on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due; and the costs of computer software and hardware, data processing, visualization technologies, sound synchronization, editing, and the rental of facilities and equipment. Payment made to a loan out company or to an independent contractor shall not be a "qualified digital media content production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required. "Qualified digital media content production expenses" shall not include expenses incurred in marketing, promotion, or advertising digital media or other costs not directly related to the production of digital media content. Costs related to the acquisition or licensing of digital media content by the taxpayer for distribution or incorporation into the taxpayer's digital media content shall not be "qualified digital media content production expenses." The following digital media content expenses are projected by the applicant.

| | |
|---|-------------|
| Qualified Digital Media Production Expenses incurred in NJ during a single privilege period after July 1, 2018. | \$4,454,524 |
| Criterion Met | Yes |

AWARD CALCULATION

| Base Award Criteria | Calculation | Result |
|--|---------------------|---------------------|
| 20% of Qualified Digital Media Content Production Expenses | \$4,454,524 x 20% = | \$890,904.80 |
| | | |
| Bonus Criteria Met | | |
| Submission of Diversity Plan deemed satisfactory by EDA and NJ Taxation. 2% of Qualified Digital Media Content Production Expenses. | \$0 x 2% = | \$0 |
| 5% of Qualified Digital Media Content Production Expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County. | \$0 x 5% = | \$0 |
| Total Award | | \$890,904.80 |

| | |
|--|------------------------|
| APPLICATION RECEIVED DATE: | 12/24/2020 |
| DATE APPLICATION DEEMED COMPLETE: | 3/12/2021 |
| ESTIMATED DATE OF PROJECT COMMENCEMENT: | 1/1/2019 |
| ESTIMATED DATE OF PROJECT COMPLETION: | 12/31/2019 |
| APPLICANT'S FISCAL YEAR END: | 12/31/2021 |
| TAX CREDIT VINTAGE YEAR(S): | 2021 |
| TAX FILING TYPE: | Corporate Business Tax |
| ANTICIPATED CERTIFICATION DATE: | December 31, 2021 |

In general, the final documentation shall be submitted to the Authority no later than four years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to

N.J.S.A. 54:10A-5 and three years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to the N.J.S.A. 54A:1-1 et seq.

The Garden State Film and Digital Media Jobs Act provides a total of \$10 million in Digital Media tax credits originally available for State Fiscal Year 2022. After today's approval, \$2.06 million remains in the program for State Fiscal Year 2022.

APPROVAL REQUEST:

The Members of the Authority are asked to initially approve the proposed award to the applicant under the New Jersey Film and Digital Media Tax Credit Program. The recommended tax credit is contingent upon receipt by the Authority of evidence that the applicant has met certain criteria to substantiate the recommended award and is subject to final approval by the Authority and the Division of Taxation. Staff may issue the Authority's final approval if the criteria met by the company is consistent with that shown herein. If the criteria met by the company differs from that shown herein, Staff may lower the tax credit amount to reflect what corresponds to the actual criteria that have been met.

APPROVAL OFFICER: M. Bhatia



MEMORANDM

To: Members of the Authority

From: Tim Sullivan
Chief Executive Officer

Date: December 8, 2021

Subject: Linden Renewable Energy, LLC PROD-00228622 Second Amended and Restated Bond Resolution.

Summary

The Members are requested to approve a Second Amended and Restated Bond Resolution (see Attachment A) for Linden Renewable Energy, LLC. The resolution will renew the Authority's volume cap allocation for the issuance of bonds and grant the Applicant a new 60-day period with an additional 30-day extension to close on the approved project. The aggregate principal amount will not exceed \$214,000,000.

Background

On April 14, 2021, the Authority approved a final bond resolution for Linden Renewable Energy, LLC authorizing the issuance of tax-exempt bonds not to exceed \$195,000,000. The bond proceeds will be used primarily to develop an organic waste anaerobic digester facility and to a lesser degree fund a debt service reserve fund, pay interest on the bonds during the construction, and pay the cost of issuance. The original approval is attached as Attachment B.

On July 14, 2021, the Authority approved a Volume Cap Renewal Resolution (see Attachment C) for Linden Renewable Energy, LLC. The Applicant and its Bond Counsel communicated to EDA staff that the Bond closing was taking longer than anticipated due to delays in engineering, procurement, and drafting of the construction contract and operation and maintenance agreement. The resolution renewed the Authority's volume cap allocation for the issuance of bonds and granted the Applicant a new 60-day period with an additional 30-day extension to close on the approved project.

On September 22, 2021, the Authority approved an Amended and Restated Bond Resolution (see Attachment D) which increased the total costs of the Project to \$281,200,000 and the maximum amount of financial assistance requested from the Authority to \$214,000,000. The Applicant stated commodity price increases and a delay in the start of construction as the reason for the increased project costs and additional funding need. The primary increases in project costs were centered in construction costs and equipment. Soft costs such as finance and legal fees also increased, however, to a lesser degree.

Pursuant to Section 12 of the September 22, 2021 Bond Resolution (see Attachment D), the Authority's allocation of \$214,000,000 of State volume limitation will cease to be effective 60 days from the

September 22, 2021 Bond Resolution not inclusive of a 30 days extension that may be approved at the discretion of the Authority. The Applicant and its bond counsel have communicated to EDA staff that the Series 2021 Bonds will not be issued within the 60-day period even if an additional 30-day extension was granted. The primary reason for the delay relates to real estate issues. The Applicant's project site in Linden, NJ does not have direct access to a public road. Instead, the Applicant can only access the public road by travelling from the project site along a private road. The Applicant is in the process of negotiating an access easement over the private road, as well as an easement to construct a wastewater pipeline to the local utility. The Applicant has assured EDA staff that it is diligently proceeding to closing with respect to the bonds and they been relentlessly working on the project for four years and have incurred approximately \$11 million in project costs to date. The Applicant is extremely confident that these issues will be resolved in December 2021 and the marketing of bonds will commence in mid-January 2022 with financial closing occurring in mid-February 2022.

Recommendation

It is recommended that the Members approve the Second Amended and Restated Bond Resolution for Linden Renewable Energy, LLC and renew the Authority's volume cap allocation up to \$214,000,000 for the issuance of bonds and grant the Applicant a new 60-day period with an additional 30-day extension to close on the approved project.



Tim Sullivan, CEO

Prepared by: Steven Novak

Attachments:

- Attachment A – Linden Renewable Energy, LLC Second Amended and Restated Bond Resolution
- Attachment B – Linden Renewable Energy, LLC Project Summary PROD-00228622 April 14, 2021
- Attachment C – Linden Renewable Energy, LLC Volume Cap Renewal Resolution Adopted: July 14, 2021
- Attachment D – Linden Renewable Energy, LLC Amended and Restated Bond Resolution Adopted: September 22, 2021

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Stand-Alone Bond

APPLICANT: Linden Renewable Energy, LLC

PROD-00228622

PROJECT USER(S): Same as applicant

PROJECT LOCATION: 4900 Tremley Point Road Linden City Union

APPLICANT BACKGROUND:

Linden Renewable Energy, LLC, established in 2019, will be an organic waste anaerobic digester (AD) facility which will use food waste and other processed organic material to produce Renewable Natural Gas (RNG) and commercial grade digested solids, similar to peat moss/finished compost, for use as a soil amendment.

Linden Renewable Energy, LLC is a wholly owned subsidiary of RNG Energy Solutions, LLC. RNG Energy Solutions, LLC (RNG) develops, finances, owns and manages the operations of state-of-the-art anaerobic digester projects that produce renewable natural gas. As the successor company to AgEnergy USA, RNG brings three decades of conventional and alternative energy development experience in the agricultural, urban and industrial environments. Most notably, AgEnergy USA completed the development of the Heartland Renewable Energy project, which is the largest codigestion anaerobic digester project in the world.

Anaerobic digestion is a sequence of processes by which microorganisms break down biodegradable material in the absence of oxygen. The process is used to manage waste or to produce fuels.

RNG is concluding negotiations with Starwood Energy Group Global, L.L.C. regarding providing equity to Linden Renewable Energy, LLC to pay a portion of the costs of the facility. As a result of its investment, Starwood would acquire a significant ownership position in Linden Renewable Energy, LLC.

This project qualifies as an Exempt Public Facility- solid waste disposal facilities, under Section 142(a)(6) of the IRS Code and therefore is exempt from the \$20 million capital expenditure limitation under Section 144 of the Code.

OTHER NJEDA SERVICES:

None

APPROVAL REQUEST:

Authority assistance will enable the Applicant to construct and equip an organic waste anaerobic digester (AD) facility, fund a debt service reserve fund and pay interest on the bonds during the construction. Proceeds of the bonds will also pay the cost of issuance.

This project is being presented for final approval.

FINANCING SUMMARY:

BOND PURCHASER: Citigroup Global Markets Inc. (Limited Public Offering)
AMOUNT OF BOND: Not to exceed \$195,000,000 Tax-Exempt.
TERMS OF BOND: Not to exceed 30 years; Fixed interest not to exceed 10.00%.
ENHANCEMENT: N/A

ESTIMATED PRODUCT COSTS:

| | | | |
|--|------------------|------------------------------|-----------------|
| Construction of New Building or Addition | \$133,423,200.00 | Debt Service Reserve Fund | \$11,595,824.00 |
| Engineering & Architectural Fees | \$1,700,000.00 | Interest During Construction | \$13,995,375.00 |
| Finance Fees | \$4,165,275.00 | | |
| Legal Fees | \$1,700,000.00 | | |
| New Equipment | \$75,000,000.00 | | |

TOTAL COSTS: \$241,579,674.00

JOBS:

| NJ Full Time Jobs at Application | Expected New Full Time Eligible Jobs at Project Site | Full Time Maintained Jobs at Project Site | Estimated Construction Jobs |
|----------------------------------|---|--|-----------------------------|
| 0 | 23 | 0 | 450 |

PUBLIC HEARING: 4/14/2021

BOND COUNSEL: McCarter & English, LLP

DEVELOPMENT OFFICER: Monika Athwal

UNDERWRITER OFFICER: Steven Novak

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

**RESOLUTION GRANTING DESIGNATION OF A PORTION OF
THE AUTHORITY'S VOLUME CAP ALLOCATION FOR THE
ISSUANCE AND SALE OF PROJECT REVENUE BONDS WITH
RESPECT TO A PROJECT FOR LINDEN RENEWABLE
ENERGY, LLC, IN AN AGGREGATE PRINCIPAL AMOUNT NOT
TO EXCEED \$195,000,000, AND AUTHORIZING OTHER
NECESSARY AND INCIDENTAL ACTION**

WHEREAS, the New Jersey Economic Development Authority (the “Authority”) has been established under the New Jersey Economic Development Authority Act, constituting Chapter 80 of the Pamphlet Laws of 1974 of the State of New Jersey (the “State”), approved August 7, 1974, as amended and supplemented (the “Act”), for the public purpose of creating and preserving employment opportunities within the State and of promoting the economic and general welfare of its inhabitants by making available financial assistance in order to induce manufacturing, industrial, commercial and other employment promoting enterprises to locate, remain or expand within the State; and

WHEREAS, Linden Renewable Energy, LLC, a limited liability company organized under the laws of the State of New Hampshire (the “Applicant”), has submitted an application (the “Application”) to the Authority for the financing of a project consisting of (i) constructing, owning and operating an organic waste anaerobic digester facility that will use food waste and other processed organic material to produce renewable natural gas and commercial grade digested solids, similar to peat moss/finished compost, for use as a soil amendment to be located on approximately 21 acres of an industrial zoned parcel (Lot 8, Block 587) located at 4900 Tremley Point Road in the City of Linden, Union County, New Jersey (the “Project”); (ii) funding a debt service reserve fund as security for the payment of the principal of and interest on the Series 2021 Bonds (as defined below), if necessary; (iii) paying interest on the Series 2021

Bonds during the construction of the Project (if desired by the Borrower); and (iv) paying costs of issuance of the Series 2021 Bonds, all as anticipated by the Application; and

WHEREAS, on April 14, 2021, the Authority approved a Resolution (the “Bond Resolution”) authorizing the issuance of its Industrial Development Revenue Bonds (Linden Renewable Energy, LLC Project), Series 2021 (the “Series 2021 Bonds”) in an aggregate principal amount not exceeding \$195,000,000; and

WHEREAS, pursuant to Section 12 of the Bond Resolution, the Authority granted an allocation of \$195,000,000 of its portion of the State volume limitation pursuant to the Internal Revenue Code of 1986, as amended, which included the carryforward election by the Authority of unused volume limitation from prior calendar years, for the issuance of the Series 2021 Bonds; and

WHEREAS, the Series 2021 Bonds will not be issued within the time period set forth under Section 12 of the Bond Resolution; and

WHEREAS, the Applicant has assured the Authority that it is diligently proceeding to closing with respect to the Series 2021 Bonds.

NOW THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY (not less than seven members thereof affirmatively concurring) AS FOLLOWS:

Section 1. With respect to the allocation by the Authority of its portion of the State volume limitation, which includes the carryforward election by the Authority of unused volume limitation from prior calendar years, there is designated to the Project \$195,000,000, which equals the maximum principal amount of the Series 2021 Bonds to be issued to finance the Project as authorized pursuant to the Bond Resolution.

The allocation of the State volume limitation made pursuant to this Resolution for, or in respect of, the Series 2021 Bonds and the Project, shall cease to be effective if the Indenture, the Loan Agreement and the other necessary documents authorized in the Bond Resolution are not executed and delivered by the respective parties thereto with respect to the Project on or before the sixtieth (60th) day following the date of this meeting, or such allocation shall expire, unless the closing deadline is extended by the Chief Executive Officer of the Authority as hereinafter provided. The Chief Executive Officer may, in his discretion, extend the foregoing deadline up to an additional 30 days, provided a written request for such extension has been filed with, and received by, the Authority no less than five days prior to the expiration of the initial 60-day period.

Section 2. Any member of the Authority or any Authorized Officer (as defined in the Bond Resolution) is hereby authorized and directed to execute such further documents and do such further things as may be necessary or proper to carry out the intent and purpose of this Resolution.

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

Adopted: July 14, 2021

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
AMENDED AND RESTATED BOND RESOLUTION

AUTHORIZING THE FINANCING OF A RENEWABLE ENERGY FACILITY LOCATED IN THE CITY OF LINDEN, NEW JERSEY FOR LINDEN RENEWABLE ENERGY, LLC; AUTHORIZING THE ISSUANCE OF INDUSTRIAL DEVELOPMENT REVENUE BONDS OF THE AUTHORITY IN A PRINCIPAL AMOUNT NOT EXCEEDING \$214,000,000; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT, A LOAN AGREEMENT, AND AN INDENTURE OF TRUST; AUTHORIZING THE SALE OF THE BONDS TO CITIGROUP GLOBAL MARKETS INC.; AUTHORIZING THE EXECUTION AND DELIVERY OF SUCH BONDS; AND AUTHORIZING OTHER NECESSARY AND INCIDENTAL ACTION

WHEREAS, the New Jersey Economic Development Authority (the “Authority”) is a public body corporate and politic constituting an instrumentality of the State of New Jersey (the “State”) established and created under the New Jersey Economic Development Authority Act, constituting Chapter 80 of the Pamphlet Laws of 1974 of the State, approved August 7, 1974, as amended and supplemented (the “Act”); and

WHEREAS, the Act declares it to be in the public interest and to be the policy of the State to foster and promote the economy of the State, increase opportunities for gainful employment and improve living conditions, assist in the economic development or redevelopment of political subdivisions within the State and otherwise contribute to the prosperity, health and general welfare of the State and its inhabitants by inducing manufacturing, industrial, commercial, recreational, retail and service enterprises and other employment promoting enterprises by making available financial assistance to locate, remain or expand within the State; and

WHEREAS, the Authority was created to further and implement such policies and the Act provides that the Authority is authorized to receive applications for financial assistance in accordance with the purposes and objectives of the Act and shall have the power to extend credit or make loans to any person for the planning, designing, acquiring, constructing, reconstructing, improving, equipping and furnishing of a project, which credits or loans may be secured by loan and security agreements, mortgages, leases, and any other instruments, upon such terms and conditions as the Authority shall deem reasonable; and

WHEREAS, the Authority has previously received an application for financial assistance dated October 20, 2020 (the “Original Application”) from Linden Renewable Energy, LLC (the “Borrower”) for the purpose of obtaining financing from the Authority for a project consisting of (i) constructing, owning and operating an organic waste anaerobic digester facility that will use food waste and other processed organic material to produce renewable natural gas and commercial grade digested solids, similar to peat moss/finished compost, for use as a soil amendment to be located on approximately 21 acres of an industrial zoned parcel (Lot 8, Block 587) located at 4900 Tremley Point Road in the City of Linden, Union County, New Jersey (the “Project”); (ii) funding a debt service reserve fund as security for the payment of the principal of and interest on the Series 2021 Bonds (as defined below), if necessary; (iii) paying interest on the Series 2021 Bonds during the construction of the Project (if desired by the Borrower); and (iv) paying costs of issuance of the Series 2021 Bonds, all as anticipated by the Application; and

WHEREAS, the Authority has determined by resolution adopted January 15, 2021 (the “Preliminary Resolution”) that the Project is eligible for financing under the Act and will serve the public purposes of the Authority herein set forth; and

WHEREAS, a public hearing with respect to the Borrower and the Project was conducted by the Authority on April 14, 2021 at 10:00 a.m. at its offices at 36 West State Street, Trenton, New Jersey after public notice of such hearing was published in the form attached hereto as Exhibit A on April 6, 2021 in the following newspapers: The Star Ledger and The Trenton Times; and

WHEREAS, the Preliminary Resolution constituted “official intent” of the Authority within the meaning of Treasury Regulation §§1.103-8(a)(5) and 1.150-2; and

WHEREAS, by resolution adopted April 14, 2021 (the “Prior Resolution”), the Authority, pursuant to the Act, made certain findings and determinations with respect to the Borrower, the Original Application, the Series 2021 Bonds and the Project; and

WHEREAS, on August 17, 2021, the Borrower filed an amendment to the Original Application (the “Amendment” and together with the Original Application, the “Application”) with the Authority which, among other things, (i) changed the description of the ownership structure of the Borrower, including Starwood Energy acquiring a significant majority of the ownership interests in the Borrower through the creation of a holding company, and the creation by the Borrower of a wholly-owned subsidiary named Linden Renewable Urban Renewal, LLC to be formed under New Jersey law in order to effectuate certain property tax treatment and (ii) increased the total costs of the Project to \$281,200,000 and the maximum amount of financial assistance requested from the Authority to \$214,000,000; and

WHEREAS, in connection with filing of the Amendment, the Authority now desires to amend and restate the Prior Resolution in its entirety through the adoption of this Amended and Restated Resolution.

WHEREAS, the Act provides that the Authority shall have the power to borrow money and issue its bonds and to provide for the rights of the holders of its bonds; and

WHEREAS, as an inducement to the Borrower to undertake the financing of the Project in furtherance of the purposes of the Act and to assist in financing the costs of the Project and costs of issuance of the Series 2021 Bonds, the Authority proposes to provide such financing by the issuance of its Industrial Development Revenue Bonds (Linden Renewable Energy, LLC Project), Series 2021 in the principal amount not to exceed \$214,000,000 (the “Series 2021 Bonds”); and

WHEREAS, the Series 2021 Bonds shall be issued pursuant to this Amended and Restated Resolution and pursuant to an indenture trust expected to be dated on or around October 1, 2021 (or such other date as shall be approved by an officer of the Authority) by and between the Authority and the Trustee to be appointed as hereinafter provided (the “Indenture”) and the Authority has determined to enter into such Indenture; and

WHEREAS, the Authority has determined to enter into a Bond Purchase Agreement (the “Purchase Agreement”) providing for the sale of the Series 2021 Bonds to Citigroup Global Markets Inc. (the “Underwriter”); and

WHEREAS, the Authority has determined to enter into a loan agreement (the “Loan Agreement”) with the Borrower in order to provide for the loan of the proceeds from the Series 2021 Bonds to the Borrower to finance the Project; and

WHEREAS, the Borrower will execute and deliver to the Authority its promissory note payable to the Authority (the “Note”) to evidence the loan; and

WHEREAS, pursuant to the Indenture, the Authority will assign (with certain reservations) its rights and benefits under the Loan Agreement and the Note to the Trustee as security for the Series 2021 Bonds; and

WHEREAS, as further security of the payment obligations of the Borrower under the Loan Agreement, the Borrower shall grant to the Trustee: (i) a lien on its interest in the land and buildings constituting the Project; (ii) a security interest in the personal property, equipment and fixtures included in the Project; and (iii) a security interest in the ownership interests of the Borrower; and

WHEREAS, pursuant to “Executive Order No. 26 NJEDA Policy and Procedures” adopted by the Authority on February 14, 1995 (the “Policy and Procedures”), the Authority must make a public finding by resolution that a negotiated sale of bonds is warranted and must file a copy of such resolution with the State Treasurer; and

WHEREAS, the Borrower has sought alternative methods of sale of the Series 2021 Bonds and has concluded that a negotiated sale to the Underwriter is most cost-effective for the Borrower; and

WHEREAS, the Authority desires to authorize the financing of the Project through (i) the issuance, execution and delivery of the Series 2021 Bonds pursuant to the terms of the Act and the Indenture, (ii) the execution and delivery of the Indenture, the Loan Agreement, the Purchase Agreement, the Official Statement (as hereinafter defined), and such other documents and certificates that may be required to accomplish the foregoing and (iii) other necessary action.

NOW THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY (not less than seven members thereof affirmatively concurring) AS FOLLOWS:

Section 1. Approval of Project. In accordance with the purposes and objectives of the Act, the Authority hereby ratifies and confirms its findings and determinations made by the Preliminary Resolution, on the basis of all information reasonably available to it that (a) the Project will tend to maintain or provide gainful employment for the inhabitants of the State, aid and assist in the economic development or redevelopment of the City of Linden, County of Union, State of New Jersey, maintain or increase the tax base of said City and County and maintain or diversify and expand industry within the State; (b) financial assistance from the Authority, as requested in the aforesaid application, will tend to maintain or provide gainful employment for the inhabitants of the State, shall serve a public purpose by contributing to the prosperity, health and general welfare of the inhabitants of the State and will tend to aid and assist in the economic growth, development or redevelopment of the City of Linden, County of Union, State of New Jersey.

Based on the foregoing findings and determinations and with the understanding that the availability of such financial assistance will be a substantial inducement to the Borrower to construct the Project, the Project as described in the preambles of this Amended and Restated Resolution, in the application filed by the Borrower with the Authority and Exhibit A attached hereto is hereby approved and determined to be eligible for financing by the Authority.

Section 2. Authorization of Execution and Delivery of the Purchase Agreement. The Chairman, Vice Chairman, Chief Executive Officer, Chief Operating Officer, Managing Director, Post Closing Financial Services, Managing Director, Underwriting, or any other officer who shall have the power to execute contracts pursuant to the By-laws of the Authority or any resolution adopted thereunder (each an “Authorized Officer”) is hereby authorized to execute and deliver on behalf of the Authority the Purchase Agreement (a copy of which has been filed

with the records of the Authority), with such changes, insertions and variations therein as are necessary or desirable and as such Authorized Officers shall approve, such approval to be evidenced by their execution thereof. The Purchase Agreement shall provide for the underwriting of the Series 2021 Bonds by the Underwriter. Such Purchase Agreement shall set forth all terms and conditions under which the Series 2021 Bonds are being purchased, including that the Series 2021 Bonds shall bear interest at a fixed rate and not in excess of an average interest rate of ten percent (10.0%) per annum.

Section 3. Approval of the Loan Agreement and the Indenture. The form of the Loan Agreement and the form of the Indenture (copies of which have been filed with the records of the Authority) are hereby approved, and any Authorized Officer is hereby authorized and directed to execute or accept and deliver, and (where appropriate) any Authorized Officer, the Secretary or any Assistant Secretary is hereby authorized and directed to affix the corporate seal of the Authority to, and attest, the Loan Agreement and the Indenture, in substantially such forms and upon the terms and conditions therein set forth, with such changes, insertions and variations therein as are necessary or desirable and as such Authorized Officers shall approve, such approval to be evidenced by their execution thereof.

The Loan Agreement shall provide for the loan of the proceeds of the Series 2021 Bonds to the Borrower to finance the costs of the Project and costs of issuance of the Series 2021 Bonds and for the Borrower to execute and deliver such documents described therein to evidence and secure the loan payments due under the Loan Agreement, and contain certain covenants of the Borrower for the benefit of the Authority and the bondholders. The Borrower is hereby authorized to proceed with the Project in accordance with the terms of the Loan Agreement.

The Indenture shall provide for, among other things, the disbursement of the proceeds of the Series 2021 Bonds to the Borrower to pay a portion of the costs of the Project and the costs of issuance of the Series 2021 Bonds, and shall assign to the Trustee all of the Authority's rights and benefits under the Loan Agreement, the Collateral (as defined in the Indenture) and other documents executed in connection therewith except for certain reserved rights described therein.

Section 4. Issuance of Series 2021 Bonds. The issuance of the Series 2021 Bonds in a principal amount not to exceed \$214,000,000 is hereby authorized; provided however, that the Series 2021 Bonds shall bear interest at a fixed rate and not in excess of an average interest rate of ten percent (10.0%) per annum and shall have a maximum maturity no later than 2051, subject to earlier redemption. Facsimile signatures of the Chairman, Vice Chairman, Chief Executive Officer, Chief Operating Officer, Managing Director, Post Closing Financial Services, Managing Director, Underwriting and the Secretary or any Assistant Secretary of the Authority are hereby authorized and directed to be printed on the face of the Series 2021 Bonds and the corporate seal (or the facsimile thereof) of the Authority is hereby authorized to be imprinted thereon; and any Authorized Officer is authorized and directed to deliver the Series 2021 Bonds to the Trustee, to be appointed and designated as hereinafter provided, for authentication under the Indenture herein authorized and, when they have been authenticated, to deliver them or cause them to be delivered pursuant to the Purchase Agreement to the Underwriter against receipt of the purchase price or the unpaid balance as the case may be plus any accrued interest due and to deposit the amount so received with the Trustee as provided in the Loan Agreement and the Indenture.

The Series 2021 Bonds shall be special, limited obligations of the Authority payable only out of the payments made by the Borrower under the Loan Agreement and certain other Collateral to the extent pledged under the Indenture. The Series 2021 Bonds shall not be in any

way debts or liabilities of the State or of any political subdivision thereof and shall not create or constitute any indebtedness, liability or obligation of the State or any political subdivision, legal, moral or otherwise, nor shall the Series 2021 Bonds be payable out of any funds, revenues or properties of the Authority other than those pledged therefor.

Section 5. Terms of Series 2021 Bonds. The Series 2021 Bonds shall be dated their date of issuance or such other date as is approved by the Authorized Officer executing the Indenture, shall be issued as registered bonds without coupons, all as more fully described in the Indenture, and shall mature on the dates and in the amounts and shall bear interest at the rates per annum all as set forth in the Indenture payable at such time or times as are approved by the Authorized Officer executing the Indenture. The terms and provisions for redemption of the Series 2021 Bonds, the registration and exchangeability privileges, and the priorities in revenues, shall be as set forth in the Indenture. In accordance with the provisions of the Indenture, the Trustee shall establish such funds as are provided in the Indenture.

Section 6. Approval and Appointment of Trustee, Bond Registrar and Paying Agent. UMB Bank, National Association is hereby approved and appointed to act as the Trustee, the Bond Registrar and the Paying Agent for the Series 2021 Bonds to act in accordance with the provisions of the Indenture.

Section 7. Approval and Designation of Underwriters. Citigroup Global Markets Inc. is hereby designated as the Underwriter in connection with the underwriting of the Series 2021 Bonds.

Section 8. Preliminary and Final Official Statement. The form of the Preliminary Official Statement describing the Series 2021 Bonds (the “Preliminary Official Statement”), a copy of which has been filed with the records of the Authority, is hereby approved. The

distribution by the Underwriter of the Preliminary Official Statement is hereby authorized and the Authorized Officers of the Authority are hereby authorized and directed to execute and deliver a final Official Statement (the "Official Statement") in substantially the form of the Preliminary Official Statement, with such changes, insertions and alterations as counsel to the Authority may advise and any such Authorized Officer shall approve, such approval to be evidenced by his or her execution thereof. Any Authorized Officer of the Authority is hereby authorized to "deem final" the Preliminary Official Statement in accordance with Rule 15(c)2-12 of the Securities and Exchange Commission.

Section 9. Execution and Delivery of Other Documents. Any Authorized Officer of the Authority is hereby authorized to execute, deliver, attest and affix the seal of the Authority to such other documents as the executing officers determine to be reasonable and appropriate to facilitate or complete the financing for the Project as authorized by this Amended and Restated Resolution. Copies of any such documents, together with the other documents referred to in this Amended and Restated Resolution and relating to the transactions authorized hereby, in final form as executed and delivered by the parties thereto, shall be filed in the official records of the Authority.

Section 10. Binding Effect of Covenants and Agreements. All covenants, obligations and agreements of the Authority set forth in this Amended and Restated Resolution and in the documents authorized hereby shall be deemed to be the covenants, obligations and agreements of the Authority to the full extent authorized or permitted by law, and all such covenants, obligations and agreements shall be binding upon the Authority and its successors from time to time and upon any board or body to which any powers or duties affecting the same shall be transferred by, or in accordance with, law. Except as otherwise provided in this Amended and

Restated Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the Authority or the members thereof by the provisions of this Amended and Restated Resolution or the documents authorized hereby shall be exercised or performed by such members, officers or other representatives of the Authority as may be required or permitted by law to exercise or perform the same. No covenant, obligation or agreement herein contained or contained in any document authorized hereby shall be deemed to be a covenant, obligation or agreement of any member, officer, agent or employee of the Authority in his or her individual capacity and neither the members of the Authority nor any officer executing the Series 2021 Bonds, the Loan Agreement or the other documents authorized by this Amended and Restated Resolution shall be liable personally thereunder or be subject to any personal liability or accountability by reason of the execution and delivery thereof.

Section 11. Findings. The Authority finds that a sale to the Underwriter is warranted based upon, among other things, the stand-alone credit of the Borrower and the Borrower having explored and dismissed alternative methods of sale.

Section 12. Designation of a Portion of the Authority's Volume Cap Allocation to the Project. With respect to the allocation by the Authority of its portion of the State volume limitation, which includes the carryforward election by the Authority of unused volume limitation from prior calendar years, there is designated to the Project \$214,000,000, which equals the maximum principal amount of the Series 2021 Bonds to be issued to finance the Project as authorized herein. The allocation of State volume limitation made pursuant to this Amended and Restated Resolution for, or in respect of, the Series 2021 Bonds and the Project, shall cease to be effective if the Indenture and the Loan Agreement are not executed and delivered by the respective parties thereto within sixty (60) days of the date hereof, unless the

written request for an extension of such allocation is filed with the Authority no less than five (5) days prior to the expiration of the initial sixty (60) day period and is approved by an Authorized Officer; provided, however, that any such extension shall not exceed an additional thirty (30) days. In the event of expiration of such allocation of volume limitation, the Applicant may request a new resolution of allocation of volume limitation from the Authority.

Section 13. Incidental and Further Action. Any member of the Authority or any Authorized Officer is hereby authorized and directed to execute, deliver and approve such further documents relating to the Series 2021 Bonds and to take such further action and to do such further things as he or she may deem necessary, appropriate or proper to effectuate the intent and purpose of this Amended and Restated Resolution or any document herein authorized.

Section 14. Repeal of Inconsistent Resolutions. All prior resolutions of the Authority or portions thereof which are inconsistent with this Amended and Restated Resolution are hereby repealed.

Section 15. Effective Date. This Amended and Restated 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 Amended and Restated 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 in the Act.

Section 16. Filing with State Treasurer. A certified copy of this Amended and Restated Resolution shall be filed with the State Treasurer in accordance with the Policy and Procedures.

Adopted: September 22, 2021

Exhibit A

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

NOTICE OF PUBLIC HEARING

The New Jersey Economic Development Authority (the “Authority”) with its offices at 36 West State Street, Trenton, New Jersey, will hold a public hearing via telephone conference call on April 14, 2021 at 10:00 a.m., in compliance with Internal Revenue Service Revenue Procedure 2020-21 as modified by Revenue Procedure 2020-49, for the purpose of providing a reasonable opportunity for interested persons to express their views, both orally and in writing, with respect to proposed issuance by the Authority of one or more series of its bonds (the “Bonds”), from time to time, as part of a plan of financing with respect to the following applications for economic development bond financing for the facilities described below:

Description of

Project:

The Bonds will be issued to finance the costs of (i) constructing, owning and operating an organic waste anaerobic digester facility that will use food waste and other processed organic material to produce renewable natural gas and commercial grade digested solids, similar to peat moss/finished compost, for use as a soil amendment to be located on approximately 21 acres of an industrial zoned parcel; (ii) funding a debt service reserve fund, if necessary; (iii) paying interest on the Bonds during the construction of the Project, if necessary; and (iv) paying costs of issuance of the Bonds, if necessary (collectively, the “Project”).

Owner or Principal

User of Project:

Linden Renewable Energy, LLC

Location of Project:

All of the buildings and structures that are part of the Project will be located at 4900 Tremley Point Road, Linden, NJ 07036 (Lot 8, Block 587), which is an approximately 21.5 acres of an industrial zoned parcel located at the eastern tip of Tremley Point approximately 1.5 miles east of Interstate-95 and is bounded on the east by the Arthur Kill, on the north by Tremley Point Road and Citgo, on the west by Linden Marine and on the south by Kinder Morgan.

Maximum

Aggregate Face

Amount of Bonds

Requested:

\$195,000,000

At the hearing, members of the public may appear in person or by attorney by calling in on the Authority’s telephone conference line at 877-692-8955, Conference ID: 4204420, to provide information and make statements concerning the foregoing application. ECONOMIC DEVELOPMENT FINANCINGS OF THE NEW JERSEY ECONOMIC DEVELOPMENT

AUTHORITY WILL BE SPECIAL, LIMITED OBLIGATIONS OF THE AUTHORITY PAYABLE SOLELY FROM THE LOAN OR LEASE PAYMENTS MADE BY THE BORROWER TO THE AUTHORITY AND CERTAIN FUNDS AND ACCOUNTS ESTABLISHED UNDER THE BOND INDENTURE FOR THE BONDS AND ARE NOT OBLIGATIONS OF THE STATE OF NEW JERSEY, NOR OF ANY COUNTY OR MUNICIPALITY THEREOF.

This notice is published in accordance with the public notice requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended.

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: December 8, 2021

SUBJECT: Adoption of Written Post-Issuance Compliance Procedures with Respect to the Authority's Motor Vehicle Surcharges Subordinate Revenue Refunding Bonds, 2017 Series A.
PROD-00174788

APPROVAL REQUEST

The Members of the Authority are asked to (i) adopt written post-issuance compliance procedures (the "Written Procedures") with respect to the Authority's Motor Vehicle Surcharges Subordinate Revenue Refunding Bonds, 2017 Series A (the "2017 Bonds") and any Refunding Bonds (as such term is defined in the hereinafter defined Resolution) issued pursuant to the Resolution (the "Refunding Bonds" and, together with the 2017 Bonds, "Tax-Exempt Bonds"), (ii) appoint one or more Tax Compliance Officers to carry out the Written Procedures and (iii) approve the use of professionals and authorize Authority staff to take all necessary actions incidental to the foregoing.

BACKGROUND

The 2017 Bonds were issued pursuant to (i) the New Jersey Economic Development Authority Act, as amended and supplemented, and the Motor Vehicle Surcharges Securitization Act of 2004, L. 2004, c. 70, as amended, including as amended by L. 2005, c. 163 and (ii) and the Motor Vehicle Surcharges Subordinate Revenue Bond Resolution adopted by the Authority on July 13, 2017 (the "Bond Resolution"), as amended and supplemented, including by a First Supplemental Motor Vehicle Surcharges Subordinate Revenue Bond Resolution adopted by the Authority on July 13, 2017 (the "First Supplemental Resolution") and a Series Certificate of the Authority dated as of the date of sale of the 2017 Series Bonds (the "Series Certificate" and together with the Bond Resolution and the First Supplemental Resolution, the "Resolution"; unless otherwise noted, capitalized terms used but not defined herein shall have the meanings given them in the Resolution). The Bond Resolution provides that no Additional Bonds (as such term is defined in the Resolution) may be issued except for Refunding Bonds.

In accordance with the provisions of the Tax Certificate, and as is required pursuant to the Internal Revenue Code of 1986, as amended, and the related regulations promulgated thereunder, since the issuance of the 2017 Bonds, the Authority has been undertaking arbitrage compliance with respect to the 2017 Bonds, and the State Treasurer, or his/her designee, has been monitoring available amounts with respect to the 2017 Bonds. The Authority now desires to memorialize those on-going tax compliance procedures in writing pursuant to and as described in the Written Procedures.

Currently, the Members of the Authority are asked to adopt a Resolution authorizing the Written Procedures and the appointment of one or more Tax Compliance Officers (as such term is defined in the Written Procedures). The Members of the Authority also are asked to authorize an Authorized Officer of the Authority to take any and all actions necessary in connection with the foregoing.

Through a competitive RFQ/RFP process performed by the Attorney General's Office on behalf of Treasury for State appropriation-backed bonds, and in compliance with Executive Order No. 26 (Whitman 1994), Chiesa Shahinian Giantomasi PC ("CSG") was selected as Bond Counsel ("Bond Counsel") in connection with the Written Procedures. The Members are asked to approve the use of CSG as Bond Counsel and authorize Authority staff to take all necessary actions incidental to the adoption of the Written Procedures, subject to review by the Attorney General's Office and Bond Counsel.

RECOMMENDATION

Based upon the above description, the Members are requested to approve the adoption of the resolution entitled "RESOLUTION AUTHORIZING ADOPTION OF WRITTEN POST-ISSUANCE COMPLIANCE PROCEDURES AND OTHER MATTERS WITH RESPECT TO THE AUTHORITY'S MOTOR VEHICLE SURCHARGES SUBORDINATE REVENUE REFUNDING BONDS" authorizing, among other things, the adoption of the Written Procedures and the appointment of Tax Compliance Officers. The Members are also asked to authorize the use of CSG as Bond Counsel and authorize the Authorized Officers of Authority to take any and all necessary actions incidental to the adoption and implementation of the Written Procedures, subject to final review and approval of all terms and documentation by Bond Counsel and the Attorney General's Office.



Tim Sullivan, CEO

Prepared By: Lori Zagarella

**NEW JERSEY ECONOMIC DEVELOPMENT
AUTHORITY**

POST ISSUANCE TAX COMPLIANCE PROCEDURES

FOR

USE OF TAX-EXEMPT BOND FINANCED PROPERTY AND PROCEEDS

Relating to

**MOTOR VEHICLE SURCHARGES SUBORDINATE
REVENUE REFUNDING BONDS**

BACKGROUND – THE BONDS

On September 20, 2017, the New Jersey Economic Development Authority (the “Authority”) issued, on a tax-exempt basis, \$549,275,000 in aggregate principal amount of Motor Vehicle Surcharges Subordinate Revenue Refunding Bonds, 2017 Series A (the “2017 Bonds”). The 2017 Bonds were issued pursuant to (i) the New Jersey Economic Development Authority Act, constituting Chapter 80 of the Laws of New Jersey of 1974, as amended and supplemented (the “EDA Act”) and the Motor Vehicle Surcharges Securitization Act of 2004, L. 2004, c. 70, as amended, including as amended by L. 2005, c. 163 (the “2004 Act,” and together with the EDA Act, the “Act”) and (ii) and the Motor Vehicle Surcharges Subordinate Revenue Bond Resolution adopted by the Authority on July 13, 2017 (the “Bond Resolution”), as amended and supplemented, including by a First Supplemental Motor Vehicle Surcharges Subordinate Revenue Bond Resolution adopted by the Authority on July 13, 2017 (the “First Supplemental Resolution”) and a Series Certificate of the Authority dated as of the date of sale of the 2017 Series Bonds (the “Series Certificate” and together with the Bond Resolution and the First Supplemental Resolution, the “Resolution”; unless otherwise noted, capitalized terms used but not defined herein shall have the meanings given them in the Resolution).

The 2017 Bonds were issued for the purpose of (i) providing funds to refund the Refunded Bonds, (ii) funding a deposit to the 2017 Series A Subaccount of the Advance Account within the Debt Service Fund, and (iii) paying costs, fees and expenses related to, or incurred by the Authority or the State in connection with, the issuance of the 2017 Bonds. In the Certificate as to Arbitrage and Compliance with the Internal Revenue Code of 1986, dated September 20, 2017, executed and delivered in connection with the issuance of the 2017 Bonds (the “Tax Certificate”), the Authority represents that it expects and intends to be able to comply with and will, to the extent permitted by law, comply with the provisions and procedures set forth in the Tax Certificate and do and perform all acts and things necessary or desirable to ensure that interest paid on the 2017 Bonds shall be excluded from gross income for federal tax purposes under Section 103 of the Code.

Based on the representations of the Authority in the Tax Certificate, bond counsel delivered its tax opinion in connection with the issuance of the Bonds, which states, in part, that under existing law, interest on the Bonds (i) is excludable from gross income for purposes of federal income taxation under Section 103 of the Code, and (ii) is not an item of tax preference to be included in calculating alternative minimum taxable income under the Code for purposes of the alternative minimum tax.

The Bond Resolution provides that no Additional Bonds (as such term is defined in the Resolution) may be issued except for Refunding Bonds (as such term is defined in the Resolution). For purposes of these procedures, the term “Bonds” refers to the 2017 Bonds and any Refunding Bonds issued as Tax-Exempt Bonds (as such term is defined under the Resolution) under the Resolution.

PURPOSE OF POST-ISSUANCE TAX COMPLIANCE PROCEDURES

The Regulations under Section 148 of the Code contain provisions relating to the creation of replacement proceeds by issuing bonds having a term longer than is reasonably necessary for the governmental purposes of the issue. In addition, Section 141 of the Code contains limitations on the extent to which proceeds of the Bonds can benefit persons other than a state or local governmental unit. Finally, Section 148 of the Code imposes limitations on the investment of

proceeds of the Bonds and required rebate of excess earnings to the federal government. The procedures set forth herein are intended to preserve the tax-exempt status of the Bonds. These procedures, together with the Tax Certificate, establish procedures for:

- (1) Monitoring the availability of “Available Amounts” (as such term is defined in Regulations §1.148-6(d)(3)(iii), as modified by Regulations §1.148-1(c)(4)(ii)(B)) as of the first day of each fiscal year of the State (a “Fiscal Year”) and taking corrective action, if required;
- (2) Managing and tracking changes in use;
- (3) Complying with the arbitrage requirements of the Code.

RESPONSIBILITY

In order to facilitate continuing compliance with the federal income tax requirements relating to the tax-exempt status of the Bonds (the “Tax Requirements”), the Authority has, pursuant to a Resolution adopted on December 8, 2021 (the “Post-Issuance Compliance Resolution”), appointed one or more tax compliance officers (each a “Tax Compliance Officer” and, together, the “Tax Compliance Officers”), as set forth below, with respect to the Bonds. The Tax Compliance Officers will have the primary responsibility to monitor the compliance by the Authority with the Tax Requirements for the Bonds. The Tax Requirements include (a) tracking Available Amounts of the State as of the first day of each Fiscal Year and taking corrective action, if required, and (b) arbitrage limitations on the investment of the proceeds of the Bonds. The general responsibilities of the Tax Compliance Officers with respect to tax compliance, and the procedures to be undertaken, are set forth below and are intended to supplement the Tax Certificate. The Authority, in consultation with Bond Counsel, will supplement and update these procedures as appropriate to provide a continuing source of guidance on these requirements.

PROVISIONS RELATING TO BONDS ISSUED TO FINANCE RESTRICTED WORKING CAPITAL EXPENDITURES

The Regulations under Section 148 contain a safe harbor in order to assure that no Replacement Proceeds arise for any reason as a result of the actual results of operations of the State in the future and that the Bonds do not remain outstanding longer than necessary. Such Regulations require that the State undertake an ongoing federal tax compliance requirement to monitor and apply any surplus Available Amounts as of the first day of the first testing year (as defined and described in the Tax Certificate) and on the first day of each Fiscal Year thereafter until the Bonds are fully retired. Such Regulations further require that within the first 90 days of each such Fiscal Year, the State must apply that amount (or if less, the Available Amounts on the date of the required redemption or investment) to redeem or to invest in eligible tax-exempt bonds.

The Treasurer of the State of New Jersey (the “State Treasurer”) has designated Deputy State Treasurer (“Deputy Treasurer”) to serve as the Tax Compliance Officer with regard to the matters discussed under this Section. Any references to “Tax Compliance Officer” in this Section shall mean the Deputy Treasurer.

In order to comply with the foregoing provisions of the Tax Certificate, the Tax Compliance Officer will retain a financial advisor to determine, as soon as possible after the beginning of the testing year and each Fiscal Year thereafter, whether Available Amounts exist as of the first day of such Fiscal Year. If such financial advisor determines that Available

Amounts exist as of the first day of any Fiscal Year, the Tax Compliance Officer will request that the Attorney General's Office retain Bond Counsel to advise the State, not later than seventy-five (75) days after the first day of such Fiscal Year, as to the corrective action(s) to be taken. The Tax Compliance Officer may rely upon the advice of Bond Counsel and such financial advisor in making the determination about annual Available Amounts and corrective actions, if any.¹ Reference should be made to the Requirements for Monitoring and Applying Available Amounts of the State, attached as Tab I for further guidance.

ARBITRAGE COMPLIANCE

The arbitrage restrictions imposed under the Code include restrictions on the investment of proceeds of tax-exempt obligations at an unrestricted yield and the rebate of excess investment earnings to the federal government as more fully described in the Tax Certificate maintained with the record of proceedings for the Bonds.

The Authority hereby designates the Chief Executive Officer of the Authority ("NJEDA CEO") to serve as the Tax Compliance Officer with regard to the matters discussed under this Section. Any references to "Tax Compliance Officer" in this Section shall mean the NJEDA CEO.

Arbitrage Review

The Tax Compliance Officer, in consultation with Bond Counsel, will establish a program for review of arbitrage-related issues as more fully described below, and will maintain the records and documents described below under "Recordkeeping for Arbitrage Compliance." The Tax Compliance Officer will maintain or cause to be maintained records documenting the investment and allocation of proceeds of the Bonds, determining if any spending exception allowed by the Code and set forth in the Tax Certificate is applicable to the expenditure of the proceeds of the Bonds, causing the rebate analysis for the Bonds to be prepared at the times required by the Tax Certificate and/or the Code, and determining the amount of any required rebate due to the federal government and the applicable due date thereof.

Rebate

The Tax Compliance Officer will establish a timeline for rebate analysis for the Bonds. Because the Bonds have a maturity in excess of five (5) years, the timeline will provide for a rebate analysis to be conducted every five (5) years and when the Bonds are discharged, as more fully described in the Tax Certificate. The Tax Compliance Officer will consult with the arbitrage consultant to make timely payments of any rebate amount due, as more fully described in the Tax Certificate.

Arbitrage Consultant

The State, will maintain a contract with a third-party arbitrage consultant for the purpose of providing arbitrage consulting services, including but not limited to:

¹ The State has retained a financial advisor that is currently monitoring Available Amounts in connection with certain prior bonds issued to finance restricted working capital expenditures of the State. Commencing with the first testing year after the issuance thereof, the Bonds were, and will continue to be, included in the annual report of the State's financial advisor with respect to Available Amounts.

1. Annual analysis of the Bonds;
2. Arbitrage rebate calculations;
3. Yield restriction calculations; and
4. Technical support on an ad-hoc basis.

The arbitrage consultant will provide, on an annual basis, an analysis of the Bonds to review and identify potential arbitrage or rebate liability, issues regarding yield restriction compliance, and/or other arbitrage related issues. The Tax Compliance Officer will review the arbitrage analysis and coordinate with the arbitrage consultant to prepare any necessary filings and payments on a timely basis. The Tax Compliance Officer will file with the IRS the appropriate IRS arbitrage rebate and yield restriction reports, Form 8038-T, along with any payments due with respect to the Bonds.

Recordkeeping for Arbitrage Compliance

In order to satisfy the arbitrage recordkeeping requirements, the Tax Compliance Officer shall create and maintain, or cause to be created and maintained, records (which records may include spreadsheets, bank statements, investment purchase confirmations, agreements, certificates, etc.) of:

1. Purchases or sales of investments made with the proceeds of the Bonds (including amounts treated as “gross proceeds” as a result of being part of a sinking fund or pledged fund or otherwise under section 148 of the Code, other than amounts that meet the exception for bona fide debt service funds) and receipts of earnings on those investments;
2. The allocations, by date and amount, of the proceeds of the Bonds to expenditures, together with purchase contracts, construction contracts, invoices, and cancelled checks;
3. Information and records showing that investments made with unspent proceeds of the Bonds after the expiration of the applicable temporary period were not invested in higher-yielding investments;
4. Information and records, including bank and earnings statements, that will be sufficient to demonstrate to the IRS, upon an audit of the Bonds, that the State has complied with one or more available spending exceptions to the arbitrage rebate requirement with respect to the Bonds;
5. In the event that an exception to the arbitrage rebate requirement was not applicable, information and calculations that will be sufficient to demonstrate to the IRS, upon an audit of the Bonds, that the rebate amount, if any, that was payable to the United States of America with respect to investments made with gross proceeds of the Bonds was calculated and timely paid with Form 8038-T being timely filed with the IRS;

6. Information and records demonstrating that all rebate calculations and reports prepared in connection with the Bonds were prepared in accordance with the requirements of the Tax Certificate and the Code;
7. Information and records showing that investments held in yield-restricted advance refunding or defeasance escrows funded with the proceeds of the Bonds were not invested in higher-yielding investments; and
8. The Tax Certificate delivered by the State as part of the record of proceedings for the Bonds.

Reference should be made to the IRS FAQs on Record Retention attached as Tab II, for further guidance on the Requirements with regard to record retention.

MISCELLANEOUS

Training Requirements

The State will provide or arrange for training for the Tax Compliance Officer and each State Tax Compliance Designee and any successor(s) thereto regarding the requirements of these procedures and will periodically provide or arrange for training for each of such individuals concerning their respective duties under these procedures.

ATTACHMENTS

- | | |
|--------|---|
| Tab I | Requirements for Monitoring and Applying Available Amounts of the State |
| Tab II | IRS FAQs on Record Retention. |

TAB I

REQUIREMENTS FOR MONITORING AND APPLYING AVAILABLE AMOUNTS OF THE STATE

In order to assure that the Bonds remain outstanding no longer than necessary and that no replacement proceeds arise for any reason as a result of the actual results of operations of the State in the future, the State was required, in accordance with Regulations Section 1.148-1(c)(4)(ii), to monitor and apply any Available Amount, commencing as of the first day of Fiscal Year of the State after the 2017 Bonds were issued. The State is required to continue to monitor and apply any Available Amount as of the first day of each Fiscal Year thereafter until the Bonds are fully retired, as stated below. The State has engaged a firm of certified public accountants or a financial advisory firm with expertise in the area of tax-exempt governmental bonds to perform the monitoring procedures set forth in paragraph a. In addition, in any year in which the State determines the existence of Available Amounts as of the first day of such Fiscal Year, the State shall request that the Attorney General's Office retain Bond Counsel to advise the State in connection with the remedial procedures set forth in this TAB I.

a. Determination and Application of Available Amount to Reduce Burden on Tax-Exempt Market. The State shall determine its Available Amount (if any) as soon as reasonably practicable after the beginning of each Fiscal Year. Under Regulations Section 1.148-1(c)(4)(ii)(B), any such Available Amount must be used within the first 90 days of the Fiscal Year to redeem tax-exempt bonds, as set forth in paragraph (b) below, or to invest in Eligible Tax-Exempt Bonds, as set forth in paragraph (c) below, or to take other actions in reliance on a tax opinion, as set forth in paragraph (d) below. For purposes of paragraph (b) and paragraph (c) below, amounts on deposit in a Bona Fide Debt Service Fund are not treated as an Available Amount, and thus need not be used to redeem, purchase or invest in tax-exempt bonds.

b. Redemption of Eligible Tax-Exempt Bonds. Within the first 90 days of each Fiscal Year, but subject to the cap provided in paragraph (e) below and the qualification in the penultimate sentence in paragraph (a) above, the State must redeem or purchase tax-exempt bonds described in Option (1) and Option (2) with funds at least equal to the total Available Amount determined as of the first day of such Fiscal Year (or, if less, the total Available Amount on the date of the required redemption or purchase), as follows:

(i) *Option (1): Redeem or Purchase Tax-Exempt Working Capital Bonds of the Same Bond Issue.* The required amount may be applied to redeem or purchase outstanding Bonds, excluding as of any date of calculation, a scheduled payment of principal during the then current or following Fiscal Year.

(ii) *Option (2): Redeem or Purchase Other Eligible Tax-Exempt Bonds of the State or Related Parties to Provide a Comparable Reduction in the Burden on the Tax-Exempt Bond Market.* The required amount may be applied to redeem or purchase other outstanding "Eligible Tax-Exempt Bonds" (within the meaning of paragraph (g)(i) below) of the State or Related Parties to the State that reduce the burden on the tax-exempt bond market to an extent that is reasonably comparable to the reduction in such burden that would have resulted from the use of the required amount to redeem or purchase the Bonds under Option (1) above.

If outstanding tax-exempt bonds are purchased by the State in compliance with Option (1) or Option (2), such purchased bonds must be tendered to the applicable bond trustee, or comparable fiduciary for cancellation.

c. Investment in Eligible Tax-Exempt Bonds; Continuous Investment Requirement. Within the first 90 days of each Fiscal Year, but subject to the cap provided in paragraph (e) below and the qualification in the penultimate sentence in paragraph (a) above, the State will invest funds at least equal to the total Available Amount determined as of the first day of the Fiscal Year (or, if less, the total Available Amount on the date of the required investment) in "Eligible Tax-Exempt Bonds" (within the meaning of paragraph (f) below). Such funds must be invested continuously in Eligible Tax-Exempt Bonds, subject to Exception (1) and Exception (2) below.

Exception (1): Reinvestment Period. Amounts previously invested by the State in Eligible Tax-Exempt Bonds under this paragraph (c) that are held for not more than 30 days in a Fiscal Year pending reinvestment in Eligible Tax-Exempt Bonds are treated as invested in Eligible Tax-Exempt Bonds.

Exception (2): Limited Use of Invested Amount. The State may spend amounts previously invested in Eligible Tax-Exempt Bonds under this paragraph (c) within 30 days of the date on which they cease to be so invested to make expenditures for a governmental purpose on any date on which the State has no other Available Amount for such purpose, or to redeem Eligible Tax-Exempt Bonds of a type described in Option (2) in paragraph (b) above.

d. Other Actions with a Tax Opinion. The State may take any other action with the total Available Amount determined as of the first day of a Fiscal Year (or, if less, the total Available Amounts on the date of a required action) for which the State receives an opinion of Bond Counsel that the action will not impair the tax-exempt status of the interest on the Bonds under Section 103 of the Code.

e. Cap on Applied or Invested Amounts. The maximum amount that the State is required to apply to the redemption or purchase of tax-exempt bonds under paragraph (b) or to invest continuously in Eligible Tax-Exempt Bonds under paragraph (c) is the outstanding principal amount of the Bonds.

f. Definition of Available Amount. "Available amount" means any amount that is available to an issuer for working capital expenditure purposes of the type financed by an issue. Except as otherwise provided, Available Amount excludes proceeds of any issue but includes cash, investments, and other amounts held in accounts or otherwise by the issuer or a Related Party if those amounts may be used by the issuer for working capital expenditures of the type being financed by an issue without legislative or judicial action and without a legislative, judicial, or contractual requirement that those amounts be reimbursed. Amounts on deposit in a Bona Fide Debt Service Fund are not treated as an Available Amount.

g. Definition of Eligible Tax-Exempt Bonds. Except as otherwise limited, "Eligible Tax-Exempt Bonds" means any of the following:

- (i) A bond the interest on which is excludable from gross income under section 103 and which is not a specified private activity bond (as defined in section 57(a)(5)(C)) subject to the alternative minimum tax;

(ii) An interest in a regulated investment company to the extent that at least 95 percent of the income to the holder of the interest represents interest on a bond that is excludable from gross income under section 103 and is not interest on a specified private activity bond (as defined in section 57(a)(5)(C)) subject to the alternative minimum tax; or

(iii) A certificate of indebtedness issued by the United States Treasury pursuant to the Demand Deposit State and Local Government Series program described in 31 CFR part 344.

h. Other Defined Terms. Other capitalized terms used but not defined in this TAB I shall have the meanings given to them in sections 103, 141, 148, 149 and 150 of the Code and the Treasury Regulations promulgated hereunder.

TAB II

IRS FAQs ON RECORD RETENTION INTERNAL REVENUE SERVICE – TAX

EXEMPT BONDS

TAX EXEMPT BOND FAQs REGARDING RECORD RETENTION REQUIREMENTS

During the course of an examination, IRS Tax Exempt Bonds (“TEB”) agents will request all material records and information necessary to support a municipal bond issue’s compliance with section 103 of the Internal Revenue Code. The following information is intended solely to answer frequently asked questions concerning how the broad record retention requirements under section 6001 of the Code apply to tax-exempt bond transactions. Although this document provides information with respect to many of the concerns raised by members of the municipal finance industry about record retention, it is not to be cited as an authoritative source on these requirements. TEB recommends that issuers and other parties to tax-exempt bond transactions review section 6001 of the Code and the corresponding Income Tax Regulations in consultation with their counsel.

These frequently asked questions and answers are provided for general information only and should not be cited as any type of legal authority. They are designed to provide the user with information required to respond to general inquiries. Due to the uniqueness and complexities of Federal tax law, it is imperative to ensure a full understanding of the specific question presented, and to perform the requisite research to ensure a correct response is provided.

The freely available Adobe Acrobat Reader software is required to view, print, and search the questions and answers listed below.

1. Why keep records with respect to tax-exempt bond transactions?
2. Who may maintain records?
3. What are the basic records that should be retained?
4. Are these the only records that need to be maintained?
5. In what format must the records be kept?
6. How long should records be kept?
7. How does this general rule apply to refundings?
8. What happens if records aren’t maintained?
9. Can a failure to properly maintain records be corrected?
10. Are there exceptions to the general rule regarding record retention for certain types of records?

Why keep records with respect to tax-exempt bond transactions?

Section 6001 of the Internal Revenue Code provides the general rule for the proper retention of records for federal tax purposes. Under this provision, every person liable for any tax imposed by the Code, or for the collection thereof, must keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Section 1.6001-1(a) of the Income Tax Regulations amplifies this general rule by providing that any person subject to income tax, or any person required to file a return of information with respect to income, must keep such books and records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by that person in any return of such tax or information.

The IRS regularly advises taxpayers to maintain sufficient records to support their tax deductions, credits and exclusions. In the case of a tax-exempt bond transaction, the primary taxpayers are the beneficial holders of the bonds. However, in most cases, the beneficial holders of tax-exempt bonds will not have any records to support their exclusion of the interest paid on those bonds. Instead, these records will generally be found in the bond transcript and the books and records of the issuer, the conduit borrower, and other participants to the transaction. Therefore, in order to ensure the continued exclusion of interest by the beneficial holders, it is important that the issuer, the conduit borrower and other participants retain sufficient records to support the continued exclusion being taken by the beneficial holders of the bonds. Pursuant to this statutory regime, IRS agents conducting examinations of tax-exempt bond transactions will look to these parties to provide books, records, and other information documents supporting the bonds continued compliance with federal tax requirements.

Additionally, in the case of many private activity bonds, the conduit borrowers are also primary taxpayers. For instance, the conduit borrower will generally deduct the interest indirectly paid on the bond issue through the loan documents. Conduit borrowers are also often entitled to claim depreciation deductions for bond-financed property. Consequently, conduit borrowers should maintain sufficient records to support their interest deductions, depreciation deductions or other tax deductions, exclusions or credits related to the tax-exempt bond issue.

Moreover, issuers and conduit borrowers should retain sufficient records to show that all tax-exempt bond related returns submitted to the IRS are correct. Such returns include, for example, IRS Forms 8038, 8038-G, 8038-GC, 8038-T, and 8038-R.

In addition to the general rules under section 6001, issuers and conduit borrowers are subject to specific recordkeeping requirements imposed by various other Code sections and regulations. For example, section 1.148-5(d)(6)(iii)(E) of the arbitrage regulations requires that an issuer retain certain records necessary to qualify for the safe harbor for establishing fair market value for guaranteed investment contracts and investments purchased for a yield restricted defeasance escrow.

Who may maintain records?

Read together, section 6001 of the Code and section 1.6001-1(a) of the Regulations apply to taxpayers and persons filing tax returns, including returns related to tax-exempt bond transactions (i.e., Forms 8038, 8038-G, 8038-GC, 8038-T, 8038-R, 8328, 8703). This encompasses several parties to the bond transaction including:

1. issuers as the party responsible for satisfying the filing requirements under section 149(e) of the Code;
2. conduit borrowers for deductions taken for payment of interest on outstanding bonds or depreciation of bond-financed facilities; and
3. bondholders, lenders, and lessors as recipients of exempt income from the interest paid on the bonds.

Since many of the same records may be examined to verify, for example, both the tax-exempt status of the bonds and the interest deductions of the conduit borrower, it is advisable for the bond documents to specify which party will bear the responsibility for maintaining the basic records relating to a bond transaction. Additional parties may also be responsible for maintaining records under contract with any of the parties named above. For example, a trustee may agree to maintain certain records pursuant to the trust indenture.

What are the basic records that should be retained?

Although the required records to be retained depend on the transaction and the requirements imposed by the Code and the regulations, records common to most tax-exempt bond transactions include:

Basic records relating to the bond transaction (including the trust indenture, loan agreements, and bond counsel opinion);

Documentation evidencing expenditure of bond proceeds;

Documentation evidencing use of bond-financed property by public and private sources (i.e., copies of management contracts and research agreements);

Documentation evidencing all sources of payment or security for the bonds; and

Documentation pertaining to any investment of bond proceeds (including the purchase and sale of securities, SLGs subscriptions, yield calculations for each class of investments, actual investment income received the investment of proceeds, guaranteed investment contracts, and rebate calculations).

Are these the only records that need to be maintained?

No, the list above is very general and only highlights the basic records that are typically material to many types of tax-exempt bond financings. Each transaction is unique and may, accordingly, have other records that are material to the requirements applicable to that financing. The decision as to whether any particular record is material must be made on a case-by-case basis and could take into account a number of factors, including, for instance, the various expenditure exceptions. Moreover, certain records may be necessary to support information related to certain requirements applicable to specific types of qualified private activity bonds. With respect to single and multifamily housing bonds as well as small issue industrial development bonds, examples of such additional material records include:

Single Family Housing Bonds

Documents evidencing that at least 20% of proceeds were available for owner financing of targeted area residences.

Documentation evidencing proper notification of each mortgagor of potential liability of the mortgage subsidy recapture tax.

Documentation evidencing that the facility is not used on a transient basis.

Multi-Family Housing Bonds

Documentation evidencing compliance with the income set-aside requirements.

Documentation evidencing timely correction, if any, of noncompliance with the income set-aside requirements.

Documentation evidencing compliance with the \$10,000,000 limitation on the aggregate face amount of the issue.

Small Issue Industrial Development Bonds

Documentation evidencing that no test-period beneficiary has been allocated more than \$40,000,000 in bond proceeds.

In what format must the records be kept?

All records should be kept in a manner that ensures their complete access to the IRS for so long as they are material. While this is typically accomplished through the maintenance of hard copies, taxpayers may keep their records in an electronic format if certain requirements are satisfied.

Rev. Proc. 97-22, 1997-1 C.B. 652 provides guidance to taxpayers that maintain books and records by using an electronic storage system that either images their hardcopy (paper) books and records, or transfers their computerized books and records, to an electronic storage media. Such a system may also include reasonable data compression or formatting technologies so long as the requirements of the revenue procedure are satisfied. The general requirements for an electronic storage system of taxpayer records are provided in section 4.01 of Rev. Proc. 97-22. A summary of these requirements is as follows:

1. The system must ensure an accurate and complete transfer of the hardcopy books and records to the electronic storage system and contain a retrieval system that indexes, stores, preserves, retrieves, and reproduces all transferred information.
2. The system must include reasonable controls and quality assurance programs that (a) ensure the integrity, accuracy, and reliability of the system; (b) prevent and detect the unauthorized creation of, addition to, alteration of, deletion of, or deterioration of electronically stored books and records; (c) institute regular inspections and evaluations; and (d) reproduce hardcopies of electronically stored books and records that exhibit a high degree of legibility and readability.
3. The information maintained in the system must be cross-referenced with the taxpayer's books and records in a manner that provides an audit trail to the source document(s).
4. The taxpayer must maintain, and provide to the Service upon request, a complete description of the electronic storage system including all procedures relating to its use and the indexing system.
5. During an examination, the taxpayer must retrieve and reproduce hardcopies of all electronically stored books and records requested by the Service and provide the Service with the resources necessary to locate, retrieve, read and reproduce any electronically stored books and records.
6. The system must not be subject, in whole or in part, to any agreement that would limit the Service's access to and use of the system.
7. The taxpayer must retain electronically stored books and records so long as their contents may become material in the administration of federal tax law.

How long should records be kept?

Section 1.6001-1(e) of the Regulations provides that records should be retained for so long as the contents thereof are material in the administration of any internal revenue law. With respect to a tax-exempt bond transaction, the information contained in certain records support the exclusion from gross income taken at the bondholder level for both past and future tax years.

Therefore, as long as the bondholders are excluding from gross income the interest received on account of their ownership of the tax-exempt bonds, certain bond records will be material. Similarly, in a conduit financing, the information contained in the bond records is necessary to support the interest deduction taken by the conduit borrower for both past and future tax years for its payment of interest on the bonds.

To support these tax positions, material records should generally be kept for as long as the bonds are outstanding, plus 3 years after the final redemption date of the bonds. This rule is consistent with the specific record retention requirements under section 1.148-5(d)(6)(iii)(E) of the arbitrage regulations.

Certain federal, state, or local record retention requirements may also apply.

How does this general rule apply to refundings?

For certain federal tax purposes, a refunding bond issue is treated as replacing the original new money issue. To this end, the tax-exempt status of a refunding issue is dependent upon the tax-exempt status of the refunded bonds. Thus, certain material records relating to the original new money issue and all material records relating to the refunding issue should be maintained until 3 years after the final redemption of both bond issues.

What happens if records aren't maintained?

During the course of an examination, TEB agents will request material records and information in order to determine whether a tax-exempt bond transaction meets the requirements of the Code and regulations. If these records have not been maintained, then the issuer, conduit borrower or other party may have difficulty demonstrating compliance with all federal tax law requirements applicable to that transaction. A determination of noncompliance by the IRS with respect to a bond issue can have various outcomes, including a determination that the interest paid on the bonds should be treated as taxable, that additional arbitrage rebate may be owed, or that the conduit borrower is not entitled to certain deductions.

Additionally, a conduit borrower who fails to keep adequate records may also be subject to an accuracy-related penalty under section 6662 of the Code on the underpayment of tax attributable to any denied deductions. Section 6662 of the Code imposes a penalty on any portion of an underpayment of tax required to be shown on a return that is attributable to one of several factors, including negligence or disregard of rules or regulations. Section 1.6662-3(b)(1) of the Regulations provides that negligence includes any failure by the taxpayer to keep adequate books and records or to substantiate items properly. Under section 6662(a) of the Code, the penalty is equal to 20 percent of the portion of the underpayment of tax attributable to the negligence. Section 6664(c)(1) provides an exception to the imposition of accuracy-related penalties if the taxpayer shows that there was reasonable cause for the underpayment and that the taxpayer acted in good faith.

Can a failure to properly maintain records be corrected?

Yes, a failure to properly maintain records can be corrected through the Tax Exempt Bonds Voluntary Closing Agreement Program (TEB VCAP). This program provides an opportunity for state and local government issuers, conduit borrowers, and other parties to a tax-exempt bond transaction to voluntarily come forward to resolve specific matters through closing agreements with the IRS. For example, TEB Compliance and Program Management has resolved arbitrage

rebate concerns in cases where issuers have approached the IRS and reported a failure to retain sufficient records to determine, precisely, the correct amount of arbitrage rebate due on a bond issue. Notice 2001-60, 2001-40 I.R.B. 304 provides more information about this program including the procedures for submitting a VCAP request.

Are there exceptions to the general rule regarding record retention for certain types of records?

No, but TEB encourages members of the municipal finance industry to submit comments and suggestions for developing record retention limitation programs for specific types of bond records, for specific classes of tax-exempt bond issues, or for specific segments of the bond industry. Comments can be submitted in writing to TEB sent by e-mail to [TEGE TEB Questions \(tege.teb.questions@irs.gov\)](mailto:TEGE.TEB.Questions@irs.gov).

RESOLUTION AUTHORIZING ADOPTION OF WRITTEN POST-ISSUANCE COMPLIANCE PROCEDURES AND OTHER MATTERS WITH RESPECT TO THE AUTHORITY'S MOTOR VEHICLE SURCHARGES SUBORDINATE REVENUE REFUNDING BONDS.

WHEREAS, on September 20, 2017, the New Jersey Economic Development Authority (the "Authority") issued, on a tax-exempt basis, \$549,275,000 in aggregate principal amount of Motor Vehicle Surcharges Subordinate Revenue Refunding Bonds, 2017 Series A (the "2017 Bonds") pursuant to (i) the New Jersey Economic Development Authority Act, constituting Chapter 80 of the Laws of New Jersey of 1974, as amended and supplemented (the "EDA Act") and the Motor Vehicle Surcharges Securitization Act of 2004, L. 2004, c. 70, as amended, including as amended by L. 2005, c. 163 (the "2004 Act," and together with the EDA Act, the "Act") and (ii) and the Motor Vehicle Surcharges Subordinate Revenue Bond Resolution adopted by the Authority on July 13, 2017 (the "Bond Resolution"), as amended and supplemented, including by a First Supplemental Motor Vehicle Surcharges Subordinate Revenue Bond Resolution adopted by the Authority on July 13, 2017 (the "First Supplemental Resolution") and a Series Certificate of the Authority dated as of the date of sale of the 2017 Series Bonds (the "Series Certificate" and together with the Bond Resolution and the First Supplemental Resolution, the "Resolution"; capitalized terms used but not defined herein shall have the meanings given them in the Resolution); and

WHEREAS, the 2017 Bonds were issued for the purpose of (i) providing funds to refund the Refunded Bonds, (ii) funding a deposit to the 2017 Series A Subaccount of the Advance Account within the Debt Service Fund, and (iii) paying costs, fees and expenses related to, or incurred by the Authority or the State in connection with, the issuance of the 2017 Bonds, all as more fully described in the Certificate as to Arbitrage and Compliance with the Internal Revenue Code of 1986, dated September 20, 2017, executed and delivered in connection with the issuance of the 2017 Bonds (the "Tax Certificate"); and

WHEREAS, the Bond Resolution provides that no Additional Bonds (as such term is defined in the Resolution) may be issued except for Refunding Bonds (as such term is defined in the Resolution). For purposes hereof, the term "Tax-Exempt Bonds" refers to the 2017 Bonds and any Refunding Bonds issued as Tax-Exempt Bonds (as such term is defined under the Resolution) under the Resolution; and

WHEREAS, the Authority has developed written procedures for post-issuance tax compliance ("Written Procedures") in connection with the Tax-Exempt Bonds to preserve the tax-exempt status of the Tax-Exempt Bonds by establishing procedures for: (1) monitoring the availability of "Available Amounts" (as such term is defined in Regulations §1.148-6(d)(3)(iii)), as modified by Regulations §1.148-1(c)(4)(ii)(B)) as of the first day of each fiscal year of the State (a "Fiscal Year") and taking corrective action, if required; (2) managing and tracking changes in use; and (3) complying with the arbitrage requirements of the Internal Revenue Code of 1986, as amended (the "Code") and the Treasury Regulations promulgated thereunder (the "Regulations") relating to tax-exempt bonds; and

WHEREAS, pursuant to the Tax Certificate, the Authority represented that it expects and intends to be able to comply with and will, to the extent permitted by law, comply with the provisions and procedures set forth in the Tax Certificate and do and perform all acts and things

necessary or desirable to ensure that interest paid on the 2017 Bonds shall be excluded from gross income for federal tax purposes under Section 103 of the Code; and

WHEREAS, the Authority's Written Procedures will also set forth the respective responsibilities of the Authority as issuer of the Tax-Exempt Bonds and the Tax Compliance Officer(s) named therein; and

WHEREAS, the Tax Compliance Officer(s) is expected to acknowledge and adopt the Written Procedures, setting forth the respective responsibilities of the Authority and such Tax Compliance Officer(s) as described therein.

NOW THEREFORE BE IT RESOLVED THAT:

Section 1. Written Post-Issuance Tax Compliance Procedures.

The Written Procedures, in substantially the form presented to this meeting, are hereby approved, provided that an Authorized Officer of the Authority is hereby authorized, with the advice of Bond Counsel and the State Attorney General, to make such changes, insertions and deletions to and omissions from such form as may be necessary or appropriate. The Chief Executive Officer of the Authority or his designee, is hereby authorized and directed, with the advice of Bond Counsel and the State Attorney General, to amend from time to time such Written Procedures as may be necessary or desirable or as may be required by the Code and Regulations.

Section 2. Designation of Tax Compliance Officer.

The Chief Executive Officer of the Authority is hereby authorized and directed to appoint one or more Tax Compliance Officers, in addition to or in lieu of the Tax Compliance Officer(s) named in the form of Written Procedures submitted to this meeting.

Section 3. Additional Proceedings.

Any of the Chairman, Vice Chairman, Chief Executive Officer, President, Chief Operating Officer, Chief Financial Officer, any Director, or any other authorized Authority representative who shall have power to execute contracts pursuant to the bylaws or a resolution adopted by the Authority is hereby authorized to take any additional actions which are necessary or desirable to achieve the purposes of this resolution, upon advice of Bond Counsel and the State Attorney General.

Section 4. Effective Date.

This resolution shall take effect in accordance with the provisions of the New Jersey Economic Development Authority Act, L. 1974, c. 80, as from time to time amended and supplemented.



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: December 8, 2021

SUBJECT: NJDEP Hazardous Discharge Site Remediation Fund Program

The following municipal projects have been approved by the Department of Environmental Protection to perform remedial action activities. The scope of work is described on the attached product summaries:

HDSRF Municipal Grants:

| | | |
|----------------|---|----------------|
| Product 300536 | Edison Township (Bavosa Sanitary Landfill) | \$1,049,553.08 |
| Product 300433 | National Park Borough (Robert Harthorne Sanitary Landfill) | \$2,325,059.15 |

| | |
|---|-----------------------|
| Total HDSRF Funding –December 2021 | \$3,374,612.23 |
|---|-----------------------|

A handwritten signature in blue ink, appearing to read "T. Sullivan", is positioned above a horizontal line.

Tim Sullivan, CEO

Prepared by: Kathy Junghans

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Hazardous Discharge Site Remediation - Residential

APPLICANT: National Park Borough

PROD-00300433

PROJECT USER(S): Same as applicant

PROJECT LOCATION: Robert Hawthorne Sanitary Landfill National Park Borough Gloucester County

APPLICANT BACKGROUND:

Between August 2007 and July 2021 Borough of National Park, identified as Block 111, Lots 1,2 & 3 received an initial grant in the amount of \$266,537 under P17808 and supplemental grants in the amount of \$104,946 under P32343, \$63,931 under P40734, \$286,257 under P44798, \$900,000 under P45638, \$264,516 under P45450, \$831,083 under Product 218899 and \$672,484.75 under Product 258778 for preliminary assessment (PA), site investigation (SI) and remedial investigation (RI) at the project site which is a former landfill and has potential environmental areas of concern (AOCs). The Borough of National Park currently owns the project site and has satisfied proof of site control. It is the Borough's intent upon completion of the environmental investigation activities to redevelop the project site for renewable energy.

NJDEP has approved this request for Remedial Action (RA) grant funding on the above-referenced project site and finds the project technically eligible under the HDSRF program, Category 2, Series A.

According to the HDSRF legislation, a grant can be awarded to a municipality, county or redevelopment entity authorized to exercise redevelopment powers up to 75% of the costs of remedial action for projects involving the redevelopment of contaminated property for recreation and conservation purposes, provided that the use of the property for recreation and conservation purposes is included in the redevelopment plan and is conveyed by a development easement, deed restriction for development or conservation easement for recreation and conservation purposes.

OTHER NJEDA SERVICES:

None

APPROVAL REQUEST:

Borough of National Park is requesting aggregate supplemental grant funding to perform RA in the amount of \$2,325,059.15 at the Robert Hawthorne Sanitary Landfill project site. Total grant funding including this approval is \$5,714,813.90.

FINANCING SUMMARY:

GRANTOR: Hazardous Discharge Site Remediation Fund

AMOUNT OF GRANT: \$2,325,059.15

TERMS OF GRANT: No Interest; No Repayment

PROJECT COSTS:

| | |
|-------------------------|----------------|
| Remedial Action | \$3,100,078.86 |
| EDA Administrative Cost | \$500.00 |

| | |
|---------------------|-----------------------|
| TOTAL COSTS: | \$3,100,578.86 |
|---------------------|-----------------------|

DATE: 11/30/2021

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Hazardous Discharge Site Remediation - Government Facility

APPLICANT: Edison Township – Bavosa Sanitary Landfill

PROD-00300536

PROJECT USER(S): Same as applicant

PROJECT LOCATION: Butler Road and Frank Street Edison Township Middlesex County

APPLICANT BACKGROUND:

Edison Township, identified as Block 410J, Lot 13.B is a former landfill which has potential environmental areas of concern (AOCs). The Edison Township owns the project site and has satisfied proof of site control. It is the Township's intent upon completion of the environmental remediation activities to redevelop the project site for recreational use.

NJDEP has approved this request for Remedial Action (RA) grant funding on the above-referenced project site and finds the project technically eligible under the HDSRF program, Category 2, Series A.

OTHER NJEDA SERVICES:

None

APPROVAL REQUEST:

Edison Township is requesting grant funding to perform RA in the amount of \$1,049,553.08 at the Bavosa Sanitary Landfill project site.

FINANCING SUMMARY:

GRANTOR: Hazardous Discharge Site Remediation Fund

AMOUNT OF GRANT: \$1,049,553.08

TERMS OF GRANT: No Interest; No Repayment

PROJECT COSTS:

| | |
|-------------------------|----------------|
| Remedial Action | \$1,049,553.08 |
| EDA Administrative Cost | \$500.00 |

| | |
|---------------------|-----------------------|
| TOTAL COSTS: | \$1,050,053.08 |
|---------------------|-----------------------|

DATE: 11/30/2021



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: December 8, 2021

SUBJECT: NJDEP Petroleum UST Remediation, Upgrade & Closure Fund Program

The following supplemental commercial project has been approved by the Department of Environmental Protection to perform tank removal and site remediation activities. The scope of work is described on the attached project summary:

PUST Grant:

Commercial

| | | |
|----------------|-------------------------------|-------------|
| Product 288642 | Kurtin's Service Center, Inc. | \$71,137.17 |
|----------------|-------------------------------|-------------|

| | |
|--|--------------------|
| Total UST Funding – December 2021 | \$71,137.17 |
|--|--------------------|

A handwritten signature in blue ink, appearing to read "T. Sullivan", is positioned above a horizontal line.

Tim Sullivan, CEO

Prepared by: Kathy Junghans

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Underground Storage Tank - Commercial

APPLICANT: Kurtin's Service Center, Inc.

PROD-00288642

PROJECT USER(S): Same as applicant

PROJECT LOCATION: 25-27 Passaic Avenue Passaic City Passaic County

APPLICANT BACKGROUND:

Between August 1999 and October 2014, Kurtin's Service Center received an initial grant in the amount of \$140,070 under P11068 and supplemental grants in the amount of \$53,335 under P11068s, \$34,169 under P17717, \$101,269 under P27864 and \$150,990 under P38692 to close five underground storage tanks (USTs) and perform the required remediation. The tanks were decommissioned and removed in accordance with the NJDEP requirements. The NJDEP has determined that the supplemental project costs are technically eligible to perform additional remedial activities.

Financial statements provided by the applicant demonstrate that the applicant's financial condition conforms to the financial test for a conditional hardship grant.

OTHER NJEDA SERVICES:

\$140,070, P11068; \$53,335, P11068s; \$34,169, P17717; \$101,269, P27864; \$150,990, P38692

APPROVAL REQUEST:

The applicant is requesting aggregate supplemental grant funding in the amount of \$71,137.17 to perform the approved scope of work at the project site. Because the aggregate supplemental funding including this request is \$410,900.17, it exceeds the maximum aggregate staff delegation approval of \$100,000 and therefore requires EDA's board approval. The project site is located in a metropolitan planning area and is eligible for up to \$1 million in grant funding. The total funding for this project to date is \$550,970.17.

FINANCING SUMMARY:

GRANTOR: Petroleum UST Remediation, Upgrade & Closure Fund

AMOUNT OF GRANT: \$71,137.17

TERMS OF GRANT: No Interest; 5 year repayment provision on a pro-rata basis in accordance with the PUST Act.

PROJECT COSTS:

| | |
|--------------------------|-------------|
| UST Project: Remediation | \$71,137.17 |
| EDA Administrative Cost | \$500.00 |

| | |
|---------------------|--------------------|
| TOTAL COSTS: | \$71,637.17 |
|---------------------|--------------------|

DATE: 11/29/2021

MEMORANDUM

To: Members of the Authority

From: Tim Sullivan
Chief Executive Officer

Date: December 8, 2021

Subject: Investment in Downtown HUB Associates LLC

Request:

Members of the Board are requested to approve:

- An investment of \$10 million from the Strategic Innovation Centers – ERF appropriation into a limited liability company (“Downtown HUB Associates”), newly formed by New Brunswick Development Corporation (“Devco”), a non-profit development corporation, to acquire land upon which Devco and its wholly-owned, special purpose affiliate, NJ Innovation Associates LLC, propose to develop the New Jersey Innovation and Technology HUB (“Innovation HUB”) in downtown New Brunswick;
- Granting delegated authority to the CEO to sign all documents associated with the investment into Downtown HUB Associates; and
- Approval of a policy to recover administrative costs associated with investments in Strategic Innovation Centers, including the use of 4.5% (or \$450,000) to recover administrative costs associated with this project and 4.5% (or \$1,125,000) to recover administrative costs associated with the HAX LLC Strategic Innovation Center project.

Background:

Devco has requested an investment from NJEDA as part of the Strategic Innovation Centers initiative approved by the Members at the July 15, 2021 meeting. The proposed funding will be used for land acquisition (\$6M) and related design, site preparation and related project costs (\$4M) to ultimately advance the Innovation HUB project. The Innovation HUB is focused on making New Jersey a magnet for scientific and technological innovation and to facilitate collaboration among various proposed anchor institutions (called the “Core Partners” – Rutgers, Hackensack Meridian, RWJ Barnabas). The Innovation HUB will be designed with collaborative office and workspace for tech, digital health, clean energy and biotech start-ups and will include wet and dry lab space and conference facilities. In addition, the Innovation HUB will provide a collaborative, full-service work environment that will include business programming and community building activities. Programming will facilitate collaboration within the local technology eco-system. The Innovation HUB will serve as a destination for the discovery of new ideas and showcase the best of New Jersey innovation.

The property for development of the Innovation HUB (the “Innovation HUB Site”, the “HUB” or the “Property”) is a 0.814 acre site located in downtown New Brunswick immediately across from

the New Brunswick Train Station. This strategic central location on the NJ Transit/Amtrak main Northeast Corridor line with immediate proximity to Rutgers and the State's life science corridor make this an ideal location for the project. The availability of this Property at this time presents a unique opportunity.

The Innovation HUB is the first phase of a multi-phased development planned for the Property and abutting vacant land totaling four acres currently owned by the New Brunswick Parking Authority ("NBPA"). The Property is the former location of NBPA's Ferren Deck, which Devco demolished at a cost of \$3.2 million. Devco has an option to acquire the Property from NBPA at fair market value (with an additional cost of \$40/gross square foot if the facility built on the Property is greater than 150,000 square feet). Devco has completed the conceptual design for the building at the site. The building is envisioned as a 150,000 to 170,000 sf, 11-story building to include three major components: the Innovation Center, the Core Partner Space, and the Translational Research Facility. The Innovation Center and the Core Partner Space comprise the Innovation HUB; Rutgers University's Translational Research Facility will be separately financed and operated.

The **Innovation Center** will be comprised of space on the bottom five floors (including the ground floor) and will provide areas for modern workspace designed to foster collaboration among researchers, entrepreneurs, start-up companies and others. The space will be designed to include collaborative office and workspace, wet and dry lab space, and conference facilities. In addition, the facility will offer significant support and amenity space including a fully equipped makers space, ground floor market hall and café, an auditorium/multipurpose room and other facilities. This space will be occupied by early stage entrepreneurial businesses.

The **Core Partner Space** will provide the project's proposed "Core Partners" – presently anticipated to include Rutgers University, RWJ/Barnabas Health, and Hackensack Meridian Health – together with the Innovation HUB's other proposed tenants – including Princeton University, Middlesex County and Choose New Jersey – with collaborative office and workspace in close proximity to the Innovation Center on floors two through five, designed to encourage direct connections with innovators in real time. Devco has proposed that the Authority become a Core Partner. Because the role of a Core Partner has not yet been defined, NJEDA's role as a potential Innovation HUB Core Partner or as a non-Core Partner tenant is subject to the Members' approval at a future meeting of the Authority. As currently designed, the proposed leased premises for NJEDA is 8,500 square feet on the second floor – which is the same floor as the skybridge access to the rail line and easy access via a stairwell to the first floor amenities.

The **Rutgers University's Translational Research Facility** will occupy the top six floors of the building and will add a unique innovation feature to allow innovation from the earliest stages of University discovery. On November 17, Rutgers and Tel Aviv University announced a collaboration for Tel Aviv University to establish a presence at the building. Rutgers has also announced plans for their medical school to move to an adjacent lot allowing for discovery to bedside implementation of new medicines all within the center of New Brunswick.

In return for its investment into Downtown HUB Associates, the Authority will receive a credit against future base rent obligations as an Innovation HUB Core Partner and/or tenant. Should the project not proceed to development, the Authority has the option to purchase Devco's membership in Downtown HUB Associates or the Property itself for \$1.

At the July 15, 2021, the Members approved an initiative to utilize the \$55 million appropriated to the NJEDA through the FY 2022 state budget to the Strategic Innovation Center - Economic Recovery Fund ("ERF"). This is the second project for consideration of an investment from this source of funding. In October 2021, the Members approved a \$25M investment in HAX LLC to bring a hard tech accelerator to New Jersey.

This investment is considered Phase 1 of a multi-phase engagement between NJEDA and Devco on this transformative innovation project for the State. Phase 2 is anticipated to include consideration of a lease for office space at the Innovation HUB, possibly as a Core Partner. Additionally, Devco, as the sole member of the entity responsible for the construction and operation of the Innovation HUB, may apply for tax incentives authorized by the Economic Recovery Act of 2020 (the "ERA"). Staff will bring these future actions – lease and possible incentive application – to the Members for consideration at a future meeting of the Authority. The current request is for the \$10 million investment in Downtown Hub Associates LLC for land acquisition and associated improvements from ERF funding move forward independent of full project approval to serve as an early investment to catalyze the Strategic Innovation Center project.

The Innovation HUB and the Strategic Innovation Centers Initiative

At the July 15, 2021 NJEDA meeting, Members approved a memorandum for:

1. Policies for undertaking development of or investing in Strategic Innovation Centers to accelerate economic recovery and drive the long-term growth of the State's innovation economy; and
2. The use of \$55,000,000 appropriated to the NJEDA's ERF for the purpose of developing Strategic Innovation Centers in accordance with the policies.

The memorandum defined Strategic Innovation Centers as facilities that either (1) directly support research and development (R&D), innovation, or entrepreneurship or (2) are aimed at solving specific problems in new and innovative ways through a combination of services such as mentorship, networking opportunities, hands-on training, business support services, education opportunities, and/or access to testing, fabrication, or manufacturing facilities and equipment.

The memorandum also established two policies for considering Strategic Innovation Center projects. First, it established a policy for how NJEDA Staff would approach opportunities for the Authority to take a lead role in developing Strategic Innovation Centers such as building and/or overseeing the operations of the Strategic Innovation Center or collaborating with another party through an early investment that serves as a catalyst for the project.

Second, it established a policy for how NJEDA Staff would consider unsolicited proposals or investment opportunities for Strategic Innovation Center projects in the State. In all cases, funding

is limited to \$25,000,000 for any single project, and the project must align with the ERF targeted industries – as presented to and approved by the Board through a separate memorandum – or demonstrate that it will meaningfully support increasing diversity and inclusion within the State’s entrepreneurial economy. Additionally, all Strategic Innovation Center projects using ERF funds under these policies must be approved by the Board.

Framework for Reviewing Unsolicited Proposals or Investment Opportunities for Strategic Innovation Centers

The policy directs Staff to review inbound unsolicited proposals on a rolling basis, including proposals that the Authority had already received at the time of the approval of the associated policy. Staff may also review other investment opportunities if the initial information Staff is presented appears to demonstrate that the project would qualify as an eligible Strategic Innovation Center and present a high-quality opportunity. In both instances, Staff may determine that additional information is necessary and request the information from the relevant party.

When considering these inbound unsolicited proposals, Staff will first verify that the project fits the definition of a Strategic Innovation Center and focuses on the targeted industries listed above or demonstrates that it meaningfully supports increasing diversity and inclusion within the State’s entrepreneurial economy. Staff will then use evaluation criteria as outlined in the approved policy to determine if an investment should be made based on an unsolicited opportunity. These evaluation criteria are also used to drive the type and sizing of an investment opportunity for a given potential project.

Should Staff determine that an unsolicited proposal satisfies the evaluation criteria and presents a high-quality opportunity, Staff will work directly with the submitter to further define the project as a potential investment opportunity for the Board’s consideration. This engagement may entail activities such as responding to a competitive RFP or direct negotiations with the proposer.

The Innovation HUB meets the key criteria of the Strategic Innovation Centers Initiative:

1. it meets the definition set forth for Strategic Innovation Centers
2. it is well-aligned with several Economic Recovery Fund (ERF) targeted industries and advances several key State objectives
3. it has the potential to be a key pillar of New Jersey’s life sciences Innovation Economy and create meaningful economic growth
4. its proposed Core Partners and tenants have a long track record of success as leaders of New Jersey’s life sciences and technology sectors
5. it has already received significant levels of support and quality commitments from other State and institutional partners
6. project characteristics strongly indicate that it will promote economic development, the creation of jobs, and the stimulation of private sector investment and expansion
7. It will engage with and leverage the workforce from the local community and existing industries

Staff's assessment of the proposed Innovation HUB indicates that this project represents a strong candidate for a Strategic Innovation Center investment.

Downtown HUB Associates LLC Structure and the Land Transaction

While Devco has had discussions over a long time with Staff about the potential Innovation HUB, this specific investment proposal originated from an unsolicited request from Devco for financial involvement by NJEDA. Based on discussions between the parties, Devco and the Authority propose to form an LLC known as Downtown HUB Associates LLC, with Devco holding a 50% interest and serving as the managing member and the NJEDA holding the remaining 50% interest ("HUB Associates"). The operating agreement for HUB Associates will provide for the NJEDA to make a capital contribution of \$10 million to support early project activities including design, site preparation and related costs (approx. \$4 million) and acquisition of the Innovation HUB Site (approx. \$6 million). Devco will contribute its option to acquire the Innovation HUB Site as its capital contribution. Additionally, Devco has already spent an estimated \$3.7 million on site work. Aside from the funding of the \$6 million purchase price, all future investment costs to be funded into HUB Associates from the \$4M EDA investment will be supported by actual expense invoices incurred by Devco, HUB Associates, or Devco's special purpose entity responsible for the development and operation (NJ Innovation Associates LLC or "Innovation Associates") from August 1st forward. Devco estimates that it will apply the NJEDA investment as follows:

| | |
|--|--------------------|
| Property Acquisition: | \$6,000,000 |
| Infrastructure & Site Preparation | |
| Utility Relocation | \$750,000 |
| Soil Improvement | \$1,000,000 |
| Tank Removal | \$60,000 |
| Foundation Removal | \$400,000 |
| Sump Removal | \$250,000 |
| Demolition | \$60,000 |
| Contingency @ 5% | \$126,000 |
| Subtotal | \$2,646,000 |
| Design & Engineering | |
| Architectural | \$1,000,000 |
| Civil Engineering | \$150,000 |
| Geotechnical Inspection | \$50,000 |
| Contingency @ 5% | \$60,000 |
| Subtotal | \$1,260,000 |
| Total | \$9,906,000 |

The operating agreement for HUB Associates also provides that NJEDA's \$10 million investment will serve as prepaid rent against base rent obligations due under an anticipated 30-year office lease for NJEDA, which may be obtained by NJEDA as a Core Partner or a non-Core Partner tenant. Based on the terms of the office lease, the \$10 million is projected to cover base rent obligations beginning in Year 1 and running through approximately Year 7 of the 30-year term, or until the obligation is exhausted. There will be an option to purchase the leased premises as a condominium at the end of the 30-year term.

To secure the NJEDA's \$10 million capital contribution, the operating agreement also provides that in the event the NJEDA funds its \$10 million investment but Devco does not meet its obligations, primarily related to constructing the Innovation HUB in the agreed upon time, the NJEDA will have the right to acquire Devco's ownership interest in Downtown Hub Associates or the Innovation HUB Site for \$1. This would give the NJEDA exclusive ownership of the property and the ability to ensure the Innovation HUB is built as a Strategic Innovation Center.

HUB Associates will acquire the Innovation HUB Site from NBPA. The Purchase and Sale Agreement also gives HUB Associates the option, depending on the final project structure, to ground lease the Innovation HUB Site from NBPA in typical form for a ground lease development. The \$6 million purchase price for the Innovation HUB Site, funded from NJEDA's capital contribution, will be paid to the NBPA pursuant to a contract of sale obligating the NBPA to convey the Innovation HUB Site to HUB Associates on request, but not before Devco identifies the exact boundaries of the Innovation HUB Site and the subdivision of the Property from the balance of NBPA's site is perfected. Because Devco's purchase and sale agreement with NBPA call for the purchase price to be released to NBPA prior to the transfer of title, NBPA will be obligated to grant the NJEDA a mortgage for the Property as a condition to the payment. If the Property is not conveyed (which could be due to the failure to obtain the required subdivision of the Property), the Authority has the right to foreclose on the mortgage or require return of the prepayment. Additionally, under the operating agreement, Downtown HUB Associates and Devco will indemnify NJEDA and the State. With respect to claims arising from the environmental conditions affecting the Property, Downtown HUB Associates will indemnify NJEDA and the State, and Devco will satisfy such claims if Downtown HUB Associates does not have sufficient assets to do so.

Once the land transfer from NBPA to HUB Associates has taken place, NJEDA will release its mortgage and HUB Associates will then ground lease the Innovation HUB Site to NJ Innovation Associates LLC for 29 years at nominal rent (the "Ground Lease"). The Ground Lease will also provide that following completion of construction and no later than expiration of the Ground Lease, HUB Associates will convey the Innovation HUB Site to NJ Innovation Associates LLC for \$1.

In Phase 2 of the Project, the Innovation HUB will be financed and developed through further agreements between Devco and the proposed Core Partners, together with the initial tenants. Devco's special purpose entity, NJ Innovation Associates LLC, will develop and own the Innovation HUB, holding all design and construction contracts. Development costs for the Innovation HUB are currently budgeted at \$170 million, subject to final design. Through the future lease or Core Partner agreement, the NJEDA will have the right to review and approve the Project's plans, specifications, budgets, schedules and operating agreements as a condition of its \$10 million investment.

The project structure contemplates that each of the Core Partners (as well as NJEDA either as a Core Partner or a non-Core Partner tenant) will lease office space in the Core Partner Space. The Authority's proposed allocated square footage is approximately 8,000 sf. The Core Partner Space office leases will be 30-year triple-net leases, with NJ Innovation Association LLC (wholly owned

by Devco) as landlord. The office leases will require NJ Innovation LLC to establish condominium interests for each of the Core Partner Spaces prior to the end of the 30-year office lease term and convey to each Core Partner (including the Authority) its corresponding unit for \$1 upon expiration of the 30-year office lease term. As part of the operating agreement, Devco has agreed to negotiate in good faith with the Authority around specific terms of the office lease.

It is anticipated that the majority of the project costs for the Innovation HUB will be funded from the proceeds of long-term taxable and tax-exempt bonds to be issued through the Middlesex County Improvement Authority, to be repaid through project revenues and rents. Devco is seeking credit support for the bonds from each of the Core Partners on a proportional basis and commitments from the Core Partners to cover any revenue shortfalls encountered in the operation and programming of the Innovation Center.

The project proforma also contemplates the issuance of short-term (10-year) taxable and tax-exempt debt to be secured by state tax credits in connection with a new Economic Recovery Act (“ERA”) tax incentive, if awarded. The annual proceeds from the sale of these tax credits would be made available to fund annual debt service associated with these short-term bonds. Devco has not yet applied for any tax credit awards associated with this project.

The NJEDA’s Due Diligence on the Innovation HUB Site

Staff has reviewed a recent appraisal prepared on behalf of Devco by Integra Realty Resources of Livingston, New Jersey, a state-certified general real estate appraiser. The report values the Property at \$6.8 million, supporting Devco’s proposed purchase price of \$6 million, net of demolition costs.

Staff has also reviewed reports on the Property’s environmental condition and a summary memorandum on site conditions prepared by Devco’s environmental consultant and licensed site remediation professional (“LSRP”), Langan Engineering & Environmental Services, Inc. The Langan memorandum identifies several areas of environmental concern (“AOCs”) affecting the Property. Two are open NJDEP cases resulting from off-site sources. Both off-site cases are being managed by LSRPs representing the entities responsible for remediation, Middlesex County and RWJ/Barnabas Health, and relate to groundwater contamination. The third AOC is an 8,000-gallon underground storage tank (“UST”) located adjacent to the Property at the northwest corner of Spring and Church Streets. The UST was reportedly used for the storage of #2 fuel oil and is no longer in service. Devco plans to remove this UST concurrent with the construction of the Spring Street connector roadway. Langan does not expect that the environmental cleanup activities associated with the two open NJDEP cases will delay construction of the Innovation HUB or materially affect the planned use of the Property. Out of an abundance of caution, Devco plans to include passive vapor intrusion mitigation into the design of the Innovation HUB building. As a condition of the Authority’s investment, HUB Associates will indemnify NJEDA and the State with respect to any claims arising from the environmental conditions affecting the Property, and Devco will satisfy any claims if HUB Associates has insufficient assets.

Staff will further review and negotiate any Core Partner and lease agreements and will present any requests to the Members at a later Board meeting. Any application by Devco, or by HUB Associates, for a tax credit incentive award will be reviewed by staff assigned to the specific tax

credit incentive program and will be presented at a later time to the Members. Staff responsible for the tax credit incentive review will be screened from staff reviewing and negotiating the project (the operating agreement and future lease and Core Partner Agreement).

Staff is recommending the investment of \$10 million in the proposed new limited liability company formed with Devco that will serve as an early investment to catalyze the project. Because the investment is secured by prime development land situated across from the New Brunswick Train Station and the option to purchase Devco's membership for \$1, staff believes that the Authority is properly insulated from risk in the event the Property is not conveyed or the Innovation HUB does not advance to construction.

Strategic Innovation Center Administration Fee

As noted herein, the fiscal 2022 state budget appropriated \$55M to the NJEDA for Strategic Innovation Centers via the Economic Recovery Fund (ERF). The ERF law (at N.J.S.A. 34:1B-7.13), in conjunction with the EDA enabling act (specifically at N.J.S.A. 34:1B-3), allows for administrative costs of a project, such as a strategic innovation center, to be funded using the ERF Funds. These costs can include financial, legal, professional and other estimates and advice; organization, administrative, insurance, operating and other expenses of the NJEDA or any person prior to and during any acquisition or construction, and all such expenses as may be necessary or incident to the financing, acquisition, construction or completion of any project.

In order to allow for the reimbursement to NJEDA for the administrative costs necessary to scope, develop, assess, implement, and verify the ongoing compliance of Strategic Innovation Center projects, NJEDA will recover fees from ERF using the following guidelines:

1. For Strategic Innovation Centers with anticipated duration periods (that is, the maximum anticipated period of time that will require ongoing NJEDA staff support) of greater than five (5) years, NJEDA will recover fees equal to four and a half percent (4.5%) of the total funds being allocated to the Strategic Innovation Center project. Staff proposes this amount as the reasonable recovery of administrative costs after a review of actual and anticipated costs for the HAX LLC Strategic Innovation Center project and this Innovation HUB project.
2. For Strategic Innovation Centers with anticipated duration periods of less than five (5) years, NJEDA staff will recommend to the Board a lower percentage of recovery fees on a project-by-project basis as those projects come to the Board for consideration.
3. For Strategic Innovation Centers where the NJEDA will take a lead role in developing the project, NJEDA staff will recommend to the Board an additional development recovery fee to recoup these costs on a project-by-project basis.
4. Going forward, recovered administrative costs will be requested up front as part of the request for project approval from the Board.

Given that the anticipated duration period of the HUB exceeds five (5) years, staff requests the Board to approve the use of \$450,000, or four and a half percent (4.5%) of the \$10,000,000 investment into the HUB for NJEDA to recover past and future administrative costs associated with this project.

In light of the Board's recent approval of the HAX LLC Strategic Innovation Center project in October 2021, staff also requests the Board to approve the use of \$1,125,000, or four and a half percent (4.5%) of the \$25,000,000 investment approved for the HAX LLC project, for NJEDA to recover past and future administrative costs associated with that project.

These requested fees will be the only administrative costs collected by the NJEDA to cover all overhead, legal, administrative and compliances fees for the Strategic Innovation Center projects.

Recommendation:

Members of the Board are requested to approve a \$10 million investment from the Strategic Innovation Centers – ERF appropriation into a limited liability company (Hub Associates LLC) as a catalyst to create a state of the art Innovation Center located in New Brunswick, delegated authority to the CEO to sign all documents associated with the investment into HUB Associates LLC, and a policy to recover from the appropriation the administrative costs associated with the investments in Strategic Innovation Centers.



Tim Sullivan, CEO

Prepared by: Kathleen W. Coviello and David E. Nuse

Exhibits:

- (1) Renderings
- (2) LLC Operating Agreement and Mortgage in Substantially final form between NJEDA and Devco
- (3) **CONFIDENTIAL** Strategic Innovation Center Evaluation Checklist



NEW JERSEY
INNOVATION +
TECHNOLOGY HUB



RUTGERS

RWJ Barnabas
HEALTH

INFINITY

INFINITY

INFINITY

BRASSERIE

BRASSERIE

Live!



EXECUTION VERSION

LIMITED LIABILITY COMPANY OPERATING AGREEMENT

OF

DOWNTOWN HUB ASSOCIATES LLC

This Operating Agreement of **DOWNTOWN HUB ASSOCIATES LLC**, a New Jersey limited liability company (the “Company”), dated as of ____, 2021 is made by and among New Jersey Economic Development Authority, a body corporate and politic of the State of New Jersey (“NJEDA”), and New Brunswick Development Corporation, a New Jersey not-for-profit corporation (“DEVCO”), each of which is sometimes referred to herein individually as a “Member” and collectively as “Members.”

Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in Exhibit A hereto.

BACKGROUND

DEVCO holds an option (as to be amended to include additional property, the “Option”) to acquire certain vacant real property in the City of New Brunswick measuring approximately 3.3 acres, as depicted on Exhibit C hereto (as further described in Exhibit A in the definition of the “Property”). The Option as to the Property shall be assigned to the Company (the “Option Assignment”). The Property is subject to a City-adopted redevelopment plan entitled “Ferren Redevelopment Plan” that, as may be amended, contemplates the redevelopment of the Property with, inter alia, a center for technology and innovation. In furtherance of that objective, DEVCO has developed and paid for concepts for such center, contributed funds to and caused the demolition of existing structures on the Property, and funded studies on environmental and geotechnical attributes of the Property which is to be developed as the New Jersey Innovation and Technology Hub (the “Project”). DEVCO has also entered into discussions with a number of key New Jersey institutions and governmental entities to participate in the realization of the Project (the “Core Partners”). The Core Partners are anticipated to include NJEDA, Rutgers University, Middlesex County, Hackensack Meridian Health, and RWJBarnabas Health Inc. DEVCO has formed a special purpose entity, of which it is the sole member, called NJ Innovation Associates LLC (“NJIA”) to (a) acquire a long term ground lease interest in the Property from the Company, (b) develop and construct the Project (in coordination with the Translational Research Facility for Rutgers University, which is to occupy a separate portion of the structure that includes the Project), (c) engage in all other business activities of any nature relating to or involving the Project, including, without limitation, renovating, subleasing, licensing, financing or refinancing all, or any portion of, the Project, including, but not limited to, entering into the office leases for the Dedicated Tenant Space (“Office Leases”), including, but not limited to, the NJEDA Lease.

The Project is comprised of the “Innovation Center” and the “Dedicated Tenant Space”. The Innovation Center will provide areas for modern workspace designed to foster collaboration among researchers, entrepreneurs, start-up companies and others. This space will be available for a variety of membership packages. The space will be designed to include collaborative office and workspace, wet and dry laboratory space, and conference facilities. In addition, the facility will offer significant support and amenity space including a fully equipped makers’ space, ground floor market hall and café, auditorium/multipurpose room and other facilities. The Dedicated Tenant Space is comprised of separately demised office and work spaces in close proximity to the Innovation Center for each of its Core Partners, as well as, for Princeton University, ChooseNJ and potentially others. Each Core Partner will lease office space in the Dedicated Tenant Space from NJIA. The Members recognize that NJEDA may ultimately determine not to become a Core Partner and may determine to limit its participation to that of a tenant under the NJEDA Lease (“NJEDA Tenant”). NJEDA’s decision as to whether to become a Core Partner or a NJEDA Tenant is subject to NJEDA Board approval.

In order to facilitate the acquisition of the Property and the development and operation of the Project, DEVCO and NJEDA have agreed to form the Company.

The Economic Recovery Fund (ERF) law, P.L. 1992, c.16as most recently amended by the New Jersey Economic Recovery Act of 2020 (ERA), authorizes the NJEDA to provide grants, financing or equity in innovation centers, research centers, incubators, and accelerators, and other similar innovation-oriented entities focused on targeted industries such as life sciences. NJEDA has reviewed the proposed Project and determined that it qualifies as a Strategic Innovation Center under the ERF law as defined by the NJEDA policy approved on July 14, 2021 (and eligible to receive funds from the Fiscal Year 2022 appropriation for the "Economic Recovery Fund - Strategic Innovation Centers"). As required by the ERF statute, NJEDA has reviewed the proposed Project and determined that:

- The Project is economically feasible;
- The Project will advance Statewide and regional strategies and objectives;
- The Project will substantially and to the greatest extent practicable leverage other sources of funds; and
- The Project will significantly promote economic development, the creation and retention of jobs, and the stimulation of private sector investment and expansion.

Subject to the NJEDA’s Board approval, NJEDA’s role in the Project may extend beyond that of a member of the Company, including, but not limited to, as a Core Partner, and, as such, NJEDA may enter into additional agreements with respect to the Project. Such additional agreements may grant to NJEDA additional oversight rights with respect to the Project, as set forth below. NJEDA acknowledges that NJIA may grant other entities, in their capacities as Core Partners, such oversight rights and that reasonableness on the part of all Core Partners will be required.

At such time as the NJEDA determines whether to be a Core Partner or an NJEDA Tenant, the following will be part of the relevant documents:

i. In its capacity as a Core Partner or NJEDA Tenant, NJEDA will have the right to reasonably review and approve the final total development budget for the Project prior to the start of building construction. Such budget shall include all costs, including, but not limited to, the amount of DEVCO's development fee and will be submitted by DEVCO or NJIA to NJEDA as drafts are prepared and updated, within 24 months following the date hereof. DEVCO's development fee for the Project is to be 2.5% of total development costs in the final budget and DEVCO's development overhead is to be 1% of total development costs in the final budget. Provided that the development fee does not exceed the amounts in the final budget, such amounts will not be subject to approval by NJEDA in its budget review.

ii. The Company or DEVCO shall obtain, or cause NJIA to obtain, the prior written consent, not to be unreasonably withheld, of NJEDA in its capacity as a Core Partner or NJEDA Tenant for any Project debt financing.

iii. The Company or DEVCO shall obtain, or cause NJIA to obtain, the prior written consent and written approval of NJEDA, not to be unreasonably withheld, in its capacity as a Core Partner or NJEDA Tenant, for the Project building specifications.

iv. Prior to the issuance of any additional project debt (for example, subsequent bond issue under same initial bond authorization) to finance budget shortfalls, DEVCO shall first be obligated to expend its project contingency.

v. DEVCO shall provide, or cause NJIA to provide, monthly written status reports regarding the Project to NJEDA in its capacity as a Core Partner or NJEDA Tenant, the format which at a minimum will include details on monthly Project activity and financials and will meet with a designated NJEDA representative to discuss progress.

vi. In its capacity as a Core Partner or NJEDA Tenant, NJEDA will have the right to reasonably participate in the selection of the programming manager to support the Innovation Center.

ARTICLE I

THE COMPANY

1.1 Formation of Limited Liability Company. The Company was formed on June 9, 2021 (the "Formation Date") pursuant to the provisions of the New Jersey Revised Uniform Limited Liability Company Act (the "Act").

1.2 Name of Company. The business and affairs of the Company will be conducted under the name DOWNTOWN HUB ASSOCIATES LLC.

1.3 Purpose of Company. The purpose of the Company shall be to (a) acquire, own or ground lease the Property as ground lessee, such ground lease to be in typical form, acceptable to NJEDA, for a long-term ground lease of land for development; i.e., with ground lessee assuming all legal and financial obligations with respect to the Property, including, without limitation, those that would otherwise be the responsibility of Seller (e.g., insurance, property taxes), (b) long-term ground lease the Property as ground lessor at nominal rent on a fully net basis to NJIA, and also including a \$1.00 purchase option for the benefit of NJIA, with additional provisions as set forth in this Operating Agreement, including, but not limited to, Section 2.4(c), and in form acceptable to NJEDA (the "Ground Lease"), (c) engage in all other business activities of any nature relating to or involving the Property, subject to the terms of the Ground Lease, and (d) perform any and all other acts that may be incidental or necessary to carry on the business of the Company as described in clauses (a) through (c) above. Notwithstanding anything to the contrary contained herein, all actions of the Company will be conducted in a manner consistent with and in furtherance of the tax-exempt purposes of DEVCO. No action will be taken by the Company or its Members that will jeopardize the status of DEVCO as an entity that is tax-exempt under Section 501(c)(3) of the Code.

1.4 Registered Office. The registered office of the Company shall be care of New Brunswick Development Corporation, 120 Albany Street Plaza – 7th Floor, New Brunswick, New Jersey 08901 and the name of the registered agent at such address is Christopher J. Paladino, President of DEVCO.

1.5 Duration of Company. The Company was formed on the Formation Date, and shall continue in perpetuity, unless sooner terminated pursuant to any provisions of this Agreement.

1.6 Members. The name and present mailing address of each Member are set forth on Exhibit B attached hereto.

ARTICLE II

CAPITAL CONTRIBUTIONS AND RETURNS; ADVANCES AND LEASES; OTHER AGREEMENTS

2.1 Capital Contributions of Members. Each Member of the Company has made or will, upon execution of this Agreement, make a Capital Contribution to the Company in the amount set forth next to its name on Exhibit B attached hereto. NJEDA shall not be subject to any additional capital calls from the Company or DEVCO for any reason whatsoever.

2.2 Capital Accounts. The Company shall establish and maintain a Capital Account for each Member and the Capital Contribution of each Member shall be credited to such Member's Capital Account.

{40965477:11}

2.3 NJEDA Funding. Upon satisfaction of the respective conditions listed below, NJEDA shall advance the sum of TEN MILLION DOLLARS (\$10,000,000) to the Company (the “NJEDA Funding”), which the Company will (a) use to pay the cost of acquiring the Property (in fee or by ground lease) (\$6,000,000), which funds shall be paid in accordance with the PSA (defined below) and which may be prior to the delivery of title to the Property as set forth in the PSA and (b) use to pay reimbursement to DEVCO, the Company and/or NJIA, upon request, for DEVCO, the Company, and/or NJIA to use for initial pre-development and development costs of the Project (\$4,000,000), which \$4,000,000 shall be limited to direct costs for architectural and engineering design; initial site development including infrastructure, utility relocation, demolition of existing on-site structures and removal of foundation and debris; and the importation and preparation of fill material. Such costs may have been incurred by DEVCO, the Company and/or NJIA after on or about August 1, 2021 (to be finalized before execution), based upon NJEDA’s receipt of satisfactory invoices for such early project activity. Such reimbursements shall be requested by the Company pursuant to the form attached hereto as Exhibit F, with the Company permitted to then reimburse DEVCO, NJIA or other designee as required. As a condition of funding of the \$6,000,000, final forms of the Option, Option Assignment, PSA and Mortgage shall have been prepared, and documents required by NJEDA in its sole discretion in connection with obtaining the approval of its Board of this Operating Agreement shall have been provided, it being acknowledged that NJEDA is already in possession of preliminary project design documents, budgets, environmental information, and other project-related documentation. As a condition of funding of the \$4,000,000, DEVCO shall provide or cause to be provided a written explanation, satisfactory to the NJEDA, of how the selection of the contractors whose costs will be reimbursed with NJEDA Funding was made and demonstrating that such contractors have competitive rates, except that for contracts for architectural, engineering, or surveying services, the explanation shall be as to how the service provider is highly qualified and that the service provider’s rates are fair and reasonable. In no instance shall the NJEDA Funding exceed \$10,000,000. The NJEDA Funding shall be reimbursed to NJEDA exclusively by applying the outstanding amount of the NJEDA Funding against base rental payments owed by NJEDA to NJIA pursuant to the contemplated future NJEDA Lease as such base rental payments become due.

2.4 Property Acquisition, Ground Lease and Conveyance.

(a) On the date hereof, DEVCO shall commence taking all remaining actions necessary to exercise the Option and to promptly close on the acquisition of the Property utilizing the applicable portion of the NJEDA Funding, causing good and marketable title to the Property to vest in the name of the Company or, at the Company’s option, ground lease the Property as ground lessee utilizing the applicable portion of the NJEDA Funding to prepay rent thereunder. The Company shall enter into a purchase and sale agreement with the owner of the Property (“PSA”), in a form acceptable to NJEDA but which shall, inter alia:

(i) provide for payment of the purchase price prior to the delivery of title;

(ii) require seller to apply to the New Brunswick Planning Board and, if necessary, the Middlesex County Planning Board, for subdivision of the Property within ninety (90) days following the Company payment of the purchase price;

(iii) require seller to deliver a mortgage ("Mortgage") to NJEDA, in form acceptable to NJEDA, at the time of payment of the purchase price securing seller's obligation to convey the Property to the Company upon perfection of the subdivision, which mortgage shall also provide for default in the event of an uncured Event of Non-Compliance and which mortgage NJEDA shall release upon delivery of title;

(iv) provide for conveyance of the Property "AS-IS" and assignment by seller to the Company of all rights against responsible parties for any environmental contamination.

(b) Prior to conveyance of title to the Property to the Company, DEVCO shall provide NJEDA with :

(i) The final boundary survey for the Property;

(ii) The approved subdivision plan or deed, executed for recording, for the Property; and

(iii) A Commitment to Insure Title from an A-rated title insurance company licensed to do business in New Jersey.

(c) On a date appropriate for the development of the Project but prior to the required date herein for commencement of construction, the Company shall enter into, and DEVCO shall cause NJIA to enter into, the Ground Lease. The Ground Lease shall also:

(i) require NJIA to undertake the development of the Innovation Center and to hire a community manager to lead the innovation programming, with the funding for such community manager to be provided by DEVCO;

(ii) require NJIA to commence construction of the Innovation Center within one year of completion of the final Project budget (which shall be within 24 months following the date of this Operating Agreement) and to achieve final building completion within five years of the commencement of construction;

(iii) provide that, upon Ground Lease expiration or Company dissolution (other than as a result of an uncured Event of Non-Compliance), the Company will convey the Property to NJIA for \$1.00;

(iv) include indemnification obligations of NJIA in substantially the same form as those set forth in Sections 5.4 and 5.5 hereof;

(v) require the Company to convey good and marketable title to the Property to NJIA by a date no later than one year prior to the first expiration date among the Core Partner Office Leases (the “Company Conveyance”), but no later than the dissolution of the Company.

2.5 NJEDA Lease. At a reasonable time in the process of design of the Dedicated Tenant Space, DEVCO shall cause NJIA to negotiate with NJEDA in good faith for the purpose of entering into the NJEDA Lease, and NJEDA shall similarly enter into such good faith negotiations. DEVCO shall cause NJIA to include in the NJEDA Lease those provisions necessary to effectuate the reimbursement process described in Section 2.3. The NJEDA Lease and the Ground Lease shall, as appropriate, provide that, in the event that the space subject to the NJEDA Lease has not received a certificate of occupancy (including temporary) and is not delivered to NJEDA within 102 months of the date hereof, subject to force majeure (which shall include, but not be limited to, delay caused by any governmental law or regulations, governmental restrictions, or a governmental entity’s procedures or actions or inactions, or litigation relating to same), the Company shall, at its option, (a) deliver to NJEDA a quitclaim deed to the Property in recordable form or (b) pay to NJEDA the Initial Purchase Price. Notwithstanding anything to the contrary in this paragraph, NJEDA’s negotiations and execution of the NJEDA Lease shall be subject to the NJEDA Board’s approval at its sole discretion.

2.6 DEVCO Advances. For informational purposes and not included in the reimbursable costs pursuant to Section 2.3, DEVCO has advanced approximately \$3,700,000 towards the cost of the Project (the “DEVCO Funding”), which was used for the demolition and architectural and engineering studies associated with the development of the Property. The NJEDA Funding is not being used to reimburse DEVCO for the DEVCO Funding; funds for same will be derived from other sources in the future.

2.7 No Additional Contributions. Except as provided in this Agreement, no Member shall be required to contribute any additional capital to the Company or to lend any funds to the Company and no Member shall be personally liable for any debts, liabilities or obligations of the Company.

2.8 Recoupment for Contributions. Except as provided in this Agreement, no Member shall receive any recoupment or payment on account of or with respect to the contributions made by it pursuant to this Agreement; no Member shall be entitled to interest on or with respect to any capital contribution; no Member shall be entitled to withdraw any part of its Capital Contributions and no Member shall be entitled to receive any distributions from the Company.

2.9 Reports. DEVCO will provide monthly written status reports regarding the Company to NJEDA in the format which at a minimum will include details on monthly project activity and financials and will meet with the designated NJEDA representative to discuss progress. DEVCO shall ensure that the Company causes accountant-prepared annual audited financial statements to be provided for NJEDA’s review in any year in which the Members agree

that Company has more than nominal income or expenses, with DEVCO to prepare an annual report in such other years

2.10 Event of Non-Compliance. In the event that the Company or DEVCO are not in compliance with Section 2.4(a)(ii), 2.4(b), 2.4(c)(ii), or 2.9, (each, an “Event of Non-Compliance”) NJEDA may provide notice of same to Company and/or DEVCO, as the case may be. Such Event of Non-Compliance shall be cured, ended, or remedied within ninety (90) days (six (6) months if the non-compliance is with respect to the date for construction completion) after written demand by NJEDA to do so or such longer period if incapable of cure within such period, provided that the Company and/or DEVCO, as the case may be, has commenced and is diligently prosecuting such cure. If such cure is not timely effectuated, NJEDA Funding can be withheld until cured and/or NJEDA shall have the right (but not the obligation) to purchase DEVCO's Membership Interest and/or the Property for one dollar (\$1.00).

2.11 Project Construction. DEVCO shall cause NJIA to hold back 5% of DEVCO's development fee on the Project until such time as the Temporary Certificate of Occupancy is issued for the Project.

2.12 Environmental. To DEVCO's current knowledge, which is limited to that comprising Exhibit D hereto, (a) no Area of Concern (AOCs) or other environmental issue will prohibit the development of the Innovation Center and (b) the total development budget for the Project includes industry-standard contingency amounts for remediation of environmental conditions that may become known during the development process.

ARTICLE III

ALLOCATIONS AND DISTRIBUTIONS

3.1 Net Income Allocations. Except as otherwise provided herein, the Net Income and, separately, the taxable income of the Company for any taxable year shall be allocated to DEVCO.

3.2 Net Loss Allocations. Except as otherwise provided herein, the Net Loss and, separately, the taxable loss of the Company for any taxable year shall be allocated to DEVCO.

3.3 Calculations. Except as otherwise provided herein, calculations and allocations of Net Income, Net Loss and taxable income, loss and other items shall be made by the accountants regularly employed by the Company as requested by the Members, but at least annually, and, to the extent such accountants deem appropriate, in conformity with the current requirements of the Internal Revenue Code and the Treasury Regulations under Section 704 thereof.

3.4 Qualified Income Offset. Notwithstanding anything to the contrary set forth above, if a Member unexpectedly receives an adjustment, allocation or distribution with respect to any period described in Treasury Regulations §1.704-1(b)(2)(ii)(d)(4), (5) or (6), such Member shall be allocated items of Company income or gain (consisting of a pro rata portion of each item of Company income, including gross income, and gain for such period) in an amount and manner

{40965477:11}

sufficient to eliminate the excess negative Capital Account of such Member described in Treasury Regulations §1.704-1(b)(2)(ii)(d)(3).

3.5 Additional Allocation Rules.

(a) Notwithstanding the foregoing, in the event any Member's Membership Interest in the Company changes during a fiscal year for any reason, including without limitation, the transfer of any interest in the Company, the allocations of taxable income or loss described above shall be adjusted as necessary to reflect the varying interests of the Members during such year on a daily basis with such items allocated to the Member who owned the Membership Interest on the earliest of the date that such item was received, accrued or recognized by the Company.

(b) Notwithstanding the foregoing, (i) in the event Code Section 704(c) or Code Section 704(c) principles applicable under Treasury Regulations §1.704-1(b)(2)(iv) require allocations of income or loss of the Company in a manner different than that set forth above, the provisions of Section 704(c) and the Treasury Regulations thereunder shall control such allocations among the Members, and (ii) all deductions of the Company that, pursuant to Treasury Regulations § 1.704-2, are attributable to a liability of the Company for which a Member (or a person related to such Member under Treasury Regulations §1.752-4(b)) bears the economic risk of loss (within the meaning of Treasury Regulations §1.752-2(b)(1)) shall be allocated to such Member.

(c) The following provisions shall be applicable in a taxable year in which the Company has nonrecourse deductions as defined in Treasury Regulations §1.704-2(b)(1):

(i) If at the close of any taxable year of the Company there is a net decrease in Minimum Gain (as defined in (ii) below), and the portion of the aggregate deficit Capital Account balance of all Members having deficit Capital Account balances at the end of such year that result in whole or in part from the allocation of losses or deductions attributable to Company nonrecourse indebtedness ("Deficit Nonrecourse Balances") exceeds (but not for the application of this Section) the Minimum Gain, if any, then to the extent of such excess (referred to as the "Minimum Gain Deficiency"), Company income and gain, if any, shall be allocated, before any other allocation is made, to each Member having a Deficit Nonrecourse Balance. Any such allocation shall be made in the proportion that such Member's Deficit Nonrecourse Balance bears to the aggregate Deficit Nonrecourse Balances of all Members. In allocating the income and gain pursuant to the previous two sentences, gains recognized from the disposition of Company assets subject to the nonrecourse liabilities of the Company shall be allocated first to the extent of the decrease in Minimum Gain attributable to the disposition of said asset. Thereafter, any income and gain to be allocated shall consist of a pro rata amount of other Company income and gain for that year. Any allocation under this Section shall be made no later than the end of the tax year in which such Minimum Gain Deficiency arises; provided, however, that in no event shall there be a reallocation of any item of income, gains, loss or deduction previously allocated among the Members pursuant to this Agreement. Any

special allocations of income or gain under this Section shall be taken into account in computing subsequent allocations of Net Income and Net Losses, so that to the extent possible, the aggregate amounts of Net Income and Net Losses allocated to each Member will be equal to the aggregate amounts that would have been allocated to them in the absence of the allocations contained in this Section. For purposes of this Section, distributions made prior to or contemporaneous with any allocation to a Member shall be reflected in such Member's Capital Account prior to making such allocation. Allocations of income and gain under this Section shall not exceed the sum of the Company Minimum Gain Deficiency and Minimum Gain. The Members intend that this Section will constitute a "Minimum Gain Chargeback" as set forth in Treasury Regulations §1.704-2(f).

(ii) "Minimum Gain" means the total gain which the Company would realize if it sold, in a taxable disposition, each of its assets which were subject to nonrecourse liabilities in full satisfaction of the liabilities. In computing said gain, only the portion of the assets' bases allocated to nonrecourse liabilities of the Company shall be taken into account.

(d) Except for arrangements expressly described in this Agreement, no Member shall enter into (or permit any person related to the Member to enter into) any arrangement with respect to any liability of the Company that would result in such Member (or a person related to such Member under Treasury Regulations §1.752-4(b)) bearing the economic risk of loss (within the meaning of Treasury Regulations §1.752-2(b)(1)) with respect to such liability unless such arrangement has been approved by all Members. To the extent a Member is permitted to guarantee the repayment of any Company indebtedness under this Agreement, each of the other Members shall be afforded the opportunity to guarantee its pro rata share of such indebtedness.

(e) Where a distribution of an asset is made in the manner described in Code Section 734, or where a transfer of a Membership Interest permitted by this Agreement is made in the manner described in Code Section 743, the Company shall file, upon the request of a Member, an election under Code Section 754, in accordance with the procedures set forth in the applicable Treasury Regulations. To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or 743(b) is required, pursuant to Treasury Regulations §1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such section of the Treasury Regulations. All other elections required or permitted to be made by the Company under the Code and the Treasury Regulations shall be made in such manner that will be most advantageous to the Members.

3.6 Distributions. Distributions of Available Cash shall be made 100% to DEVCO. Distributions of Available Cash, if any, shall be made at such times as the Managing Member shall determine in its sole discretion. No distribution shall be declared and paid if prevented by any applicable law.

ARTICLE IV

MANAGEMENT OF THE COMPANY

4.1 **Managing Member.** Except as otherwise provided herein, the Managing Member shall manage, conduct and make all decisions regarding the operations and affairs of the Company. DEVCO is hereby appointed as the Managing Member of the Company. Any subsequent Managing Member shall be appointed by the affirmative vote of all Members. In dealing with the Managing Member acting on behalf of the Company, no Person shall be required to inquire into the authority of the Managing Member to bind the Company. Persons dealing with the Company are entitled to rely conclusively on the power and authority of the Managing Member as set forth in this Agreement or in any power of attorney, resolution or other document delivered by the Managing Member. Notwithstanding anything to the contrary contained herein, the Company shall not, without the prior written consent of each member, (i) engage in any transaction outside the scope of the Company's purpose or outside the ordinary course of the Company's business; (ii) (a) commence a voluntary case under any applicable bankruptcy, insolvency, reorganization or similar law now or hereafter in effect, (b) consent to the entry of any order for relief in an involuntary case under any such law, (c) consent to the appointment or taking possession by a receiver, liquidator, assignee, custodian or trustee or sequestrator (or similar official) of the Company or of any substantial part of the property thereof, (d) make a general assignment for the benefit of creditors, or (e) make any other arrangement or composition with creditors generally to modify the terms of payment or otherwise restructure their obligations; (iii) amend this Operating Agreement; (iv) admit additional Members; (v) agree to any merger, consolidation, liquidation, or dissolution; or (vi) sell, transfer or otherwise convey the Property, except as provided herein.

ARTICLE V

LIABILITY AND INDEMNIFICATION OF MEMBERS; INSURANCE

5.1 **Liability to Third Parties.** Except as provided in this Operating Agreement, no Member shall be personally liable for the debts, obligations or liabilities of the Company, including, but not limited to, those existing under a judgment, decree or order of a court, except to the extent required by law with respect to amounts distributed to such Member at a time when the Company was insolvent or was rendered insolvent by virtue of such distribution.

5.2 **Liability to the Company and Members.** Except as provided in this Operating Agreement, no Member (or his, her or its respective heirs, personal representatives, assigns and successors) shall be personally liable, responsible or accountable in damages or otherwise to the Company or any Member for any action taken or failure to act on behalf of the Company within the scope of the authority conferred on such Member by this Agreement or by law, unless such action or omission was performed or omitted in bad faith or constituted gross negligence, willful misconduct or breach of fiduciary duty.

5.3 Insurance. DEVCO will procure and maintain or cause to be procured and maintained standard commercial general liability, commercial auto liability, workers compensation, umbrella/excess liability (if applicable), professional liability (if applicable) and other insurances as set forth on Exhibit E hereto. NJEDA shall advise regarding entities to be named as additional insureds.

5.4 Indemnification.

(a) The Company shall indemnify and hold each Member harmless from and against any loss, expense, damage or injury suffered or sustained by such Member by reason of any acts, omissions or alleged acts or omissions in its capacity as a Member hereunder arising out of its activities on behalf of the Company or in furtherance of the interests of the Company, including, but not limited to, any judgment, award, settlement, reasonable attorneys' fees and other costs and expenses incurred in connection with the defense of any actual or threatened action, proceeding or claim, provided that the acts or omissions or alleged acts or omissions upon which such actual or threatened action, proceeding or claim is based have been taken or suffered in good faith in the reasonable belief that such action or omission was in, or not opposed to, the best interests of the Company, and were not performed or omitted in bad faith or as a result of gross negligence, willful misconduct or breach of fiduciary duty.

(b) The Company shall defend, indemnify and hold harmless NJEDA, the State of New Jersey, and each of their respective officers, directors, members, commissioners, employees and representatives (collectively, the "Indemnitees") from any and all claims, judgments and liabilities arising out of the environmental condition of the Property, including but not limited to, claims, judgments and liabilities for injuries to persons natural or otherwise, other than those resulting from the gross negligence or willful misconduct of any Indemnatee. To the extent that the Company has insufficient assets to satisfy such obligations, DEVCO shall satisfy them on behalf of the Company.

(c) Notwithstanding anything to the contrary contained herein, DEVCO shall be responsible for all injuries to persons (natural and otherwise), including without limitation, death and all physical and other damage(s) sustained by persons while performing or resulting from the performed work under the Operating Agreement, if and to the extent the same results from any act, omission, negligence, fault or default of DEVCO or the Company or any DEVCO or Company subcontractors, or their employees, agents, servants, independent contractors or subcontractors retained by DEVCO or Company pursuant to the Operating Agreement other than for the gross negligence or willful misconduct of any Indemnitees (as defined above). The Ground Lease shall include similar provisions with respect to NJIA.

(d) DEVCO agrees to defend, indemnify and hold harmless the Indemnitees from any and all claims, judgments and liabilities, including but not limited to, claims, judgments and liabilities for injuries to persons natural or otherwise, and including without limitation death and other damage(s), if and to the extent the same results from any act, omission, negligence, fault or default of DEVCO or Company or DEVCO or Company subcontractors, or their agents,

employees, servants, independent contractors or subcontractors and from any claims against, or liability incurred by the Indemnites by reason of claims against DEVCO or Company, or DEVCO or Company subcontractors, or their employees, agents, servants, independent contractors or subcontractors for any matter whatsoever in connection with the services performed under the Operating Agreement, including, but not limited to, claims for compensation, injury or death, and agree to reimburse the Indemnites for reasonable attorneys' fees incurred in connection with the above, other than for the gross negligence or willful misconduct of any Indemnitee. The Ground Lease shall include similar provisions requiring NJIA to indemnify Company, DEVCO and NJEDA.

(e) This Section 5.4 shall not survive the dissolution of the Company or NJEDA's acquisition of DEVCO's Membership Interest or of the Property except with respect to events occurring prior to the occurrence thereof.

5.5 NJEDA Duties as a State Entity. Notwithstanding anything to the contrary in this Article V or elsewhere in this Operating Agreement, the duties (including fiduciary duties) of NJEDA as a Member shall be subject to N.J.S.A. 34:1B-1 et seq.; the Conflict of Interest Law, N.J.S.A. 52:13D-12 et seq.; and other law applicable to a New Jersey instrumentality.

ARTICLE VI

TRANSFERABILITY OF COMPANY INTERESTS

6.1 Members.

(a) A Member shall cease to be a Member of the Company upon the occurrence of any of the following events: (i) its Bankruptcy or (ii) the filing of a certificate of dissolution or its equivalent or the revocation of its charter. Upon the occurrence of any of the foregoing events, the Managing Member may elect, at its sole discretion, to pay the former Member (or its successor-in-interest) the positive amount, if any, of its Capital Account. A former Member's interest in the Company shall for all purposes be deemed canceled and no longer outstanding as of the day of the event giving rise to the termination of such interest.

(b) If the Company shall, as a result of any event(s), have only one member, and the Act or any other applicable law requires that it must have at least two members, the Company shall have 90 days to admit an additional member before it shall be dissolved and its affairs wound up.

(c) In the event a new member is added pursuant to this Section 6.1, such entity shall not be deemed to be a Member until all of the following conditions have been satisfied: (i) the entity has executed all documents and instruments necessary to make it a party to this Agreement and other agreements to which the Company is a party, as necessary, (ii) the remaining Member consents to the admission and (iii) the entity has paid to the Company any and all amounts (including, without limitation, a Capital Contribution) sufficient to cover all reasonable expenses

{40965477:11}

connected with the admission. Distributions to any new member shall be made in accordance with Section 6.2(b) hereof as if the Membership Interest was transferred.

6.2 Transfer of Membership Interest.

(a) Requirement of Transfer. Each Member shall have the right to Transfer the whole or any part of its Membership Interest in the Company to another Person, provided that all of the following conditions have been met (the term "Transfer" when used in this Agreement with respect to an interest in the Company includes a sale, assignment, gift, bequest or any other disposition, whether voluntary or by operation of law): (i) the transferor and transferee execute and acknowledge such instruments as are reasonably necessary or desirable to effect such substitution, including, without limitation, the written acceptance and adoption by the transferee of the provisions of this Agreement; (ii) all Members, other than the transferring Member, consent to the Transfer, unless such Transfer is required by law; and (iii) a the transferring Member shall be responsible for all reasonable expenses connected with the Transfer and substitution, unless such payment cannot be reasonably effectuated.

(b) Effective Date of Transfer. The Transfer by a Member of all or part of its Membership Interest in the Company shall become effective only on the first day of the month following the satisfaction of the requirements set forth in Section 6.2(a) hereof (the "Effective Date of Transfer"). A transferee of, or substitute Member for, a Member shall be entitled to receive distributions of Available Cash and allocations under Article III hereof with respect to such Membership Interest only after the Effective Date of Transfer of such Membership Interest.

6.3 Transfers in Violation of a Restriction. Each Member hereby acknowledges the reasonableness of the restrictions set forth in Section 6.2 hereof in view of the purposes of the Company and the relationship of the Members. The Transfer of any Membership Interests in violation of any such restriction shall be deemed null and void and of no force or effect.

ARTICLE VII

DISSOLUTION AND LIQUIDATION

7.1 Dissolution and Liquidation. The Company shall be dissolved and its business terminated upon the happening of the earliest of the following ("Events of Dissolution"): (i) the expiration of its term as provided in Section 1.5 hereof, (ii) by the unanimous agreement of the Members, (iii) upon occurrence of the Company Conveyance; (iv) by DEVCO, at any time following the completion of construction of the space subject to the NJEDA Lease as evidenced by receipt of a certificate of occupancy, including temporary (at which time the Company shall convey the Property to NJIA for \$1.00); or (v) if the Company does not have at least two members and the Act or any applicable law requires same. In the event of the dissolution of the Company, the remaining assets of the Company, if any, shall be sold or distributed as promptly as possible in accordance with Section 3.6 hereof.

ARTICLE VIII

ANNUAL ACCOUNTING PERIOD; RECORDS; TAX RETURNS

8.1 Annual Accounting Period. The annual accounting period of the Company shall be January 1st through December 31st.

8.2 Records. The Managing Member shall maintain, or cause to be maintained, the Certificate of Formation and all amendments thereto, this Agreement and all amendments hereto, complete and accurate records of all transactions of the Company, copies of the Company's tax returns and full and true books of account in accordance with the accounting method followed by the Company for federal income tax purposes. All of such books and records shall, at all times, be kept at the offices of the Managing Member and, during regular business hours, shall be opened upon reasonable notice for inspection, examination and copying by a Member or its authorized representative(s). Members shall be given reasonable access to the information regarding the Company.

8.3 Tax Matters.

(a) Notwithstanding anything in this Agreement to the contrary, the Members fully intend that the Company shall be taxed as a partnership for federal, state and local income tax purposes.

(b) The Managing Member shall make any determination whether the Company shall make available tax elections (including any election pursuant to Section 754 of the Code relating to certain adjustments to the basis of the Company's business property) for federal, state or local income tax purposes. The Managing Member shall determine any issue regarding or affecting the reporting or characterization for tax purposes of items of income, gain, loss or deduction of the Company.

(c) No Member shall file a notice with the IRS in connection with such Member's intention to treat an item on such Member's federal income tax return in a manner which is inconsistent with the treatment of such item on the Company's federal income tax return

(d) As the Company is subject to the New Partnership Audit Rules, the Company will, with respect to any "final partnership adjustment" (as such term is defined for purposes of Section 6226(a) of the Code (as revised to reflect the New Partnership Audit Rules) or any successor provision), timely make the election provided for in Section 6226(a) of the Code (as revised to reflect the New Partnership Audit Rules) or any successor provision, unless otherwise determined by the Members. As the Company is subject to the New Partnership Audit Rules, the Company's partnership representative for purposes of the New Partnership Audit Rules ("Partnership Representative") will be DEVCO, or upon its withdrawal as the Partnership Representative, as selected by the Members, and timely elections of such status under Section 6223(a) of the Code (as revised to reflect the New Partnership Audit Rules) shall be made. The Section 8.3(d) shall survive any termination of this Agreement.

{40965477:11}

(e) The Partnership Representative shall arrange for and cause to be delivered to each of the other Members notice of all significant matters that may come to its attention in its capacity as the Partnership Representative by giving notice thereof within five (5) Business Days after becoming aware thereof and, within such time, shall forward to each of the other Members copies of all significant written communications it may receive in such capacity. This provision is not intended to authorize the Partnership Representative to take any action which is beyond its power as the Partnership Representative.

8.4 Tax Returns. All U.S. federal, state and local income tax returns shall be prepared by the accountants under the direction of the Managing Member. The Managing Member shall cause the accountants to submit drafts of all tax returns (including all related schedules and exhibits and upon request, copies of all supporting workpapers) to the other Members, together with a request for comments on their contents, at least fifteen (15) days prior to the required filing date. All costs and expenses associated with the preparation and filing of tax returns and other tax work required or permitted by this Article VIII shall be Company Costs and shall be paid or reimbursed by the Company.

8.5 Tax Audits. All tax audits and tax litigation shall be conducted under the direction and control of the Partnership Representative.

8.6 Tax-Exempt Matters; Unrelated Business Taxable Income. NJEDA acknowledges that DEVCO is a tax-exempt organization under Section 501(c)(3) of the Code and agree to take no action or cause the Company to take any action that would or is likely to cause DEVCO to lose such tax-exempt status. Further, upon the written request of DEVCO, NJEDA shall take all reasonable actions to prevent the Company from incurring unrelated business taxable income, as that term is defined and described in Sections 511 through 515 of the Code. For the avoidance of doubt, NJEDA is an instrumentality of the State of New Jersey generally exempted from income tax under Section 115 of the Code.

ARTICLE IX

NEW JERSEY COMPLIANCE

9.1 Conflict of Interest.

(a) DEVCO, by itself and on behalf of the Company, hereby agrees to abide by the prohibitions contained in this Section 9.1 on activities between DEVCO, by itself and on behalf of the Company, and any State officer or employee or special State officer or employee as defined by N.J.S.A. 52:13D-13(b) and (e) ("State Employee"). Any violation of these prohibitions shall render DEVCO liable to debarment in the public interest, pursuant to the procedures established by Executive Order No. 34 (1976), Executive Order No. 189 (1988), and NJEDA debarment rules at N.J.A.C. 19:30-2.1 et seq., as amended and supplemented.

(b) DEVCO, by itself and on behalf of the Company, hereby warrants that it has not paid and shall not pay, offer to pay, or agree to pay, either directly or indirectly, any fee,

{40965477:11}

commission, compensation, gift, gratuity, or other thing of value of any kind to any State Employee with which DEVCO, by itself or on behalf of the Company, 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 State Employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such State Employee has an interest within the meaning of N.J.S.A. 52:13D-13(g).

(c) DEVCO, by itself and on behalf of the Company, hereby warrants that the solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State Employee from DEVCO or the Company shall be reported in writing forthwith by DEVCO to the Attorney General and the State Ethics Commission.

(d) DEVCO, by itself and on behalf of the Company, hereby warrants that it shall not undertake directly or indirectly any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, expressed or implied, or sell any interest in DEVCO to any State Employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, 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). DEVCO, by itself and on behalf of the Company, hereby warrants that any relationships subject to this provision shall be reported in writing forthwith to the State Ethics Commission, which may grant a waiver of this restriction upon application of the State Employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

(e) DEVCO, by itself and on behalf of the Company, hereby warrants that it shall not influence, or attempt to influence or cause to be influenced, any State Employee in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said State Employee.

9.2 Non-Discrimination. DEVCO, by itself and on behalf of the Company, agrees to comply, and to require its contractors and subcontractors to comply with the following: (i) laws and executive orders prohibiting discrimination, including, but not limited to, Title VII of the Civil Rights Act of 1964 as amended, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and their state law counterparts; (ii) the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), and 60-741.5(a) (for construction contractors, 41 CFR §60-4.3(a)); (iii) non-discrimination of qualified individuals based on their status as protected veterans or individuals with disabilities and does not discriminate against individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin, or any other characteristic protected by law; (iv) affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status, or disability and (v) the provisions of 29 CFR Part 471, Appendix A to subpart a, as applicable. Such compliance with this paragraph shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or

termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

9.3 Prevailing Wages and Affirmative Action. In performing, requiring, or paying in whole or in part for, any work for the Project under a construction contract, as that term is defined N.J.A.C. 19:30-3.1 and -4.1, for the Company, DEVCO, by itself and on behalf of the Company, shall cause its contractors to comply, with all applicable prevailing wage requirements (including, but not limited to, N.J.S.A. 34:11-56.25 et seq., N.J.S.A. 34:1B-5.1, N.J.A.C. 19:30-4.1 et seq., and N.J.S.A. 34:11-56.48) and affirmative action requirements (including, but not limited to, N.J.S.A. 34:1B-5.4 and N.J.A.C. 19:30-3.1 et seq.), which requires, among other things, including mandatory language from NJEDA in the construction contracts and subcontracts. Further, DEVCO, by itself and on behalf of the Company, and its contractors and landlord, shall comply with the provisions of the Public Works Contractor Registration Act ("PWCRA"), N.J.S.A. 34:11-56.48 et seq., where applicable, including, but not limited to, the requirement that all contractors, subcontractors and lower tier subcontractors who bid on or engage in any contract for "public work" as defined in N.J.S.A. 34:11-56.26 be first registered with the New Jersey Department of Labor and Workforce Development.

9.4 State Record Keeping.

(a) DEVCO, by itself and on behalf of the Company, shall maintain all documentation related to products, transactions or services under this contract for a period of five (5) years from the date of final disbursement by NJEDA. Such records shall be made available to the NJEDA and the New Jersey Office of the State Comptroller upon request. Furthermore, DEVCO acknowledges that relevant records of persons entering into contracts with NJEDA are subject to audit or review by the Office of the State Comptroller pursuant to N.J.S.A. 52:15C-14(d).

(b) NJEDA and the State reserve the right to audit the records of the Company in connection with all matters related to this Agreement and of the Company. DEVCO, by itself and on behalf of the Company, agrees to maintain records for a period of not less than five (5) years after receipt of final disbursement by NJEDA.

9.5 Breach. The Parties hereby agree that, in the event of a breach or violation of the warranties and requirements contained in this Article IX, NJEDA shall have the right to make a determination of an Event of Non-Compliance and proceed pursuant to Section 2.10.

ARTICLE X

MISCELLANEOUS

10.1 Notices. Any offer, acceptance, election, approval, consent, request, waiver, notice or other document required or permitted to be given pursuant to any provision of this Agreement shall be deemed duly given only when in writing, signed by or on behalf of the person or entity giving same, and either personally delivered or deposited in a designated United States mail

{40965477:11}

depository, registered or certified mail, return receipt requested, postage prepaid, addressed to the person or persons to whom such offer, acceptance, election, approval, consent, request, waiver or notice is to be given at their respective addresses indicated herein, or at such other address as shall have been set forth in a notice sent pursuant to the provisions of this Section.

10.2 Binding Effect. Subject in all respects to the limitations concerning the transferability of Membership Interests contained herein and, except as otherwise herein expressly provided, the provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective personal representatives, heirs, successors and permitted assigns.

10.3 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall for all purposes constitute one agreement which is binding on all of the parties hereto.

10.4 Paragraph Headings. Paragraph titles or captions contained in this Agreement are inserted as a matter of convenience and for reference only and shall not be construed in any way to define, limit or extend or describe the scope of this Agreement or the intention of the provisions hereof.

10.5 Variation in Pronouns. All pronouns and variations thereof shall be deemed to refer to masculine, feminine, neuter, singular or plural, as the identity of the person or persons may require.

10.6 Severability. Each provision hereof is intended to be severable and the invalidity or illegality of any portion of this Agreement shall not affect the validity or legality of the remainder.

10.7 Entire Agreement. This Agreement constitutes the entire agreement of the Members with respect to the matters set forth herein and supersedes any prior understanding or agreement, oral or written.

10.8 Third-Party Beneficiaries. This Agreement shall be binding upon and inure solely to the benefit of each party hereto, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement, including, without limitation, by way of subrogation.

10.9 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey. All tort claims against NJEDA shall be governed by the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., and all contract claims against NJEDA shall be governed by the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1. The courts of the State of New Jersey shall have exclusive jurisdiction and the exclusive venue shall be the Superior Court of Mercer County, New Jersey.

10.10 Trial By Jury. EACH PARTY HERETO WAIVES ITS RIGHT TO TRIAL OF ANY ISSUES BY A JURY.

{40965477:11}

10.11 OPRA/OPMA. This transaction is subject to the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1.1 et seq., and any review and approval by the NJEDA Board shall be in a public meeting pursuant to the Open Public Meetings Act (OPMA), N.J.S.A. 10:4-6 et seq.

10.12 Compliance. DEVCO, by itself and on behalf of the Company, agrees to: (a) comply with all applicable laws and regulations; (b) obtain and comply with all legally required licenses and permits, etc.; (c) secure and maintain Workers' Compensation and Disability insurance and comply with all New Jersey laws regarding same; (d) comply with all New Jersey laws and regulations regarding non-discrimination and contractor/supplier diversity.

[Signature Page Follows]

IN WITNESS WHEREOF, this Operating Agreement has been executed on the date first above written.

**NEW BRUNSWICK DEVELOPMENT
CORPORATION, Member**

By: _____
Name: Christopher J. Paladino
Title: President

**NEW JERSEY ECONOMIC DEVELOPMENT
AUTHORITY, Member**

By: _____
Name: Tim Sullivan
Title: CEO

EXHIBIT A

DEFINITIONS

1.1 Agreement means this Operating Agreement, as amended from time to time.

1.2 Available Cash means all cash, funds, revenues and proceeds of the Company, from any source, on hand and available for distribution from time to time after: (1) payment of all Company Costs that are due and payable as of such date, (2) payment of all outstanding Member Loans, and (3) provision for any Reserve Additions.

1.3 Bankruptcy when used with reference to any Member, shall be deemed to occur (1) when the Member (a) makes an assignment for the benefit of creditors, or (b) files a voluntary petition in bankruptcy, or (c) is adjudged a bankrupt or insolvent, or has entered against it an order for relief in any bankruptcy or insolvency proceeding, or (d) files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, or (e) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief or (f) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the Member or of all or any substantial part of its properties, or (2) (a) 120 days after the commencement of any proceeding against the Member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation, the proceeding has not been dismissed, or (b) 90 days after the appointment without its consent or acquiescence of a trustee, receiver or liquidator of the Member or of all or any substantial part of its properties, the appointment is not vacated or stayed, or within 90 days after the expiration of any such stay, the appointment is not vacated.

1.4 Capital Account shall be maintained for each Member. The Capital Account will be credited with (i) the Capital Contributions of such Member (net of liabilities relating to any contributed property that the Company is considered to assume or take subject to under Section 752 of the Code), (ii) such Member's distributive share of Net Income, as hereinafter defined, and (iii) any items of income or gain that are taken into account in determining capital accounts under Treasury Regulations Section 1.704-1(b)(2)(iv)(m) on account of any adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Section 743(b). The Capital Account will be debited by (i) such Members distributive share of Net Loss, as hereinafter defined, (ii) any items of loss that are taken into account in determining capital accounts under Treasury Regulations Section 1.704-1(b)(2)(iv)(m) on account of any Code Section 734(b) or Section 743(b) adjustments to the tax basis of Company assets, and (iii) the amount of cash and the Gross Asset Value of other Company property distributed to such Member (net of any liabilities relating to such distributed property that the Member is considered to assume or take subject to under Code Section 752). In the event the Gross Asset Value of Company assets are adjusted under this Agreement, the Capital Accounts of the Members shall be adjusted to reflect the

aggregate net adjustment as if the Company recognized gain or loss equal to the amount of such aggregate net adjustment and such gain or loss were allocated to the Members pursuant to Article III of this Agreement. The foregoing provisions relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulations under Section 704 of the Code and shall be applied in a manner consistent with such Treasury Regulations, except as otherwise set forth herein.

1.5 Capital Contribution for each Member means the total amount of cash and the Gross Asset Value of any other assets contributed by such Member, net of liabilities assumed or to which the assets are subject.

1.6 Certificate or Certificate of Formation means the Amended and Restated Certificate of Formation of the Company, as the same may be amended or restated as provided herein or required by law, duly filed in accordance with the laws of the State of New Jersey, and recorded with the State Treasurer of the State of New Jersey.

1.7 Code or Internal Revenue Code means the Internal Revenue Code of 1986, as amended, and the regulations issued thereunder.

1.8 Company means Downtown HUB Associates LLC.

1.9 Company Costs means all of the expenditures of any kind made or to be made with respect to the operations of the Company, as permitted under the terms of this Agreement, including, without limitation, all amounts payable pursuant to any management agreements entered into by the Company, costs of improvements to be made with respect to the Company's business, state and local taxes, insurance premiums, professional fees, overhead costs, general and administrative costs, and all other types of costs, expenses, charges, liabilities and obligations of the Company.

1.10 Gross Asset Value means, with respect to any asset of the Company, the asset's adjusted basis for federal income tax purposes; provided, however, that (i) the Gross Asset Value of any asset contributed by a Member to the Company as a Capital Contribution or distributed to a Member by the Company shall be the gross fair market value of such asset (without taking into account Section 7701(g)) as reasonably determined by the Members as of the date of the contribution or distribution, as the case may be; (ii) the Gross Asset Value of all Company assets shall be adjusted to equal their respective gross fair market values, as reasonably determined by the Members, upon the termination of the Company for federal income tax purposes pursuant to Code Section 708(b) (1) (B); (iii) the Gross Asset Value of all Company assets shall be adjusted to equal their respective gross fair market values (without taking into account Code Section 7701(g)), as reasonably determined by the Members, as of (A) the date of the acquisition of an additional interest in the Company by any new or existing Member in exchange for more than a de minimis Capital Contribution to the Company, or (B) upon the distribution by the Company to

a retiring or continuing Member of more than a de minimis amount of Company property or money.

1.11 Managing Member means DEVCO and its successors and assigns in their capacities as Managing Member of the Company.

1.12 Member means each Person signing this Agreement as a Member and any Person who subsequently is admitted as a Member of the Company.

1.13 Membership Interest means the entire right, title and interest of a Member in the Company, including, but not limited to, a Member's right to participate in the management and affairs of the Company under this Agreement.

1.14 Net Income and Net Loss, respectively, shall mean the net taxable income or loss (i.e., the aggregate amount of all income and gain reduced by the aggregate amount of all loss and deduction) of the Company as determined annually in accordance with the method of accounting followed by the Company for Federal income tax purposes and determined in accordance with Section 703(a) of the Code (for this purpose, all items of income, gain, loss and deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss); provided, however, for purposes of computing such taxable income or loss: (i) any deductions for depreciation, cost recovery or amortization attributable to any assets of the Company shall be determined in accordance with the Code, except that if the Gross Asset Value of an asset differs from its adjusted tax basis for federal income tax purposes at any time during such fiscal year, the deductions for depreciation, cost recovery or amortization attributable to such asset from and after the date during such year in which such difference first occurs shall bear the same ratio to the Gross Asset Value as of such date as the federal income tax depreciation, amortization or other cost recovery deduction for such year from and after such date bears to the adjusted tax basis as of such date; (ii) any gain or loss attributable to the taxable disposition of any Company property shall be determined by the Company as if the adjusted tax basis of such property as of such date of such disposition were such Gross Asset Value reduced by all amortization, depreciation and cost recovery deductions (determined in accordance with clause (i) above) which are attributable to the property; (iii) the computation of all items of income, gain, loss and deduction shall be made without regard to any basis adjustment under Code Section 743, which may be made by the Company; (iv) any receipts of the Company that are exempt from federal income tax and are not otherwise included in taxable income or loss shall be added to such taxable income or loss; and (v) any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as expenditures described in Section 705(a)(2)(B) of the Code pursuant to Treasury Regulation Section 1.704-1(b) shall be subtracted from such taxable income or loss.

1.15 NJEDA Lease means that certain triple-net lease agreement to be entered into between NJEDA, as lessee, and NJIA, as lessor, for a certain portion of the Dedicated Tenant Space to be occupied by NJEDA, for a term of 30 years.

1.16 Person means and includes an individual, municipal corporation, partnership, corporation, association, limited liability company, trust estate or other entity.

1.17 Prime Rate means on any date a fluctuating rate of interest per annum (based upon a year of 360 days for the actual number of days elapsed) equal to the stated prime or base commercial lending rate as announced from time to time by JPMorgan Chase Bank, N.A. in New York, NY as its base or prime rate (such interest rate to change automatically, effective as of the date of each change in the prime rate).

1.18 Property means (1) that certain real property depicted on Exhibit C, and the buildings and other improvements located thereon, (2) all personal property being acquired by the Company for the purpose of renovating, developing and operating the real estate, buildings and other improvements referred to in clause (1), (3) all easements, licenses and other rights relating to any of the foregoing and (4) all other assets or property of whatever kind or nature owned by the Company from time to time.

1.19 Reserve Additions for any period means all cash reserves reasonably determined, established and approved during that period by the Managing Member for anticipated future Company Costs.

EXHIBIT B

MEMBERS AND CAPITAL CONTRIBUTIONS

| <u>Members</u> | <u>Capital Contribution</u> | <u>Ownership Interest</u> |
|---|---------------------------------|-------------------------------|
| New Brunswick Development Corporation 120 Albany Street Plaza New Brunswick, NJ 08901 | \$10.00 | 50% |
| New Jersey Economic Development Authority 36 W State St. Trenton, NJ 08608 | \$10.00 | 50% |

EXHIBIT C

PROPERTY DESCRIPTION

17 November 2021
130121401

**WRITTEN DESCRIPTION
PROPOSED PHASE 1 LOT
CITY OF NEW BRUNSWICK
MIDDLESEX COUNTY, NEW JERSEY**

Beginning at a point where the southerly line of French Street (62 feet wide per tax map) is intersected by the easterly line of Kirkpatrick Street as established by Ordinance 101202 as shown on a plan entitled "Phase 1 Minor Subdivision Plan, The Hub, Block No. 17, Lot No. 1.01, Block No. 18, Lot Nos. 4.01, 11.02 & 19.01, City of New Brunswick, Middlesex County, New Jersey", prepared by Langan Engineering and Environmental Services, Inc., dated November 16, 2021, Drawing No. CB101, and from said Point of Beginning running; thence

1. North 60°17'32" East, a distance of 144.11 feet, along said southerly line of French Street, to a point where said southerly line is intersected by the division line between Proposed Phase 1 Lot and Proposed Remainder Lot as shown on said plan; thence the following three courses along said division line:
2. South 20°23'05" East, a distance of 108.40 feet to a point; thence
3. South 10°11'39" East, a distance of 145.45 feet to a point; thence
4. South 79°48'21" West, a distance of 160.00 feet to a point on the aforementioned easterly line of Kirkpatrick Street; thence the following three courses along said easterly line:
5. North 10°11'44" West, a distance of 135.65 feet to a point;
6. North 79°44'01" East, a distance of 5.00 feet to a point; thence
7. North 10°11'44" West, a distance of 68.34 feet to the Point of Beginning.

Encompassing an area of 35,468 square feet or 0.814 acres, more or less.

The above description was prepared in accordance with a plan entitled, "Phase 1 Minor Subdivision Plan, The Hub, Block No. 17, Lot No. 1.01, Block No. 18, Lot Nos. 4.01, 11.02 & 19.01, City of New Brunswick, Middlesex County, New Jersey", prepared by Langan Engineering and Environmental Services, Inc., dated November 16, 2021, Drawing No. CB101.

Joseph E. Romano
Professional Land Surveyor
New Jersey License No. 24GS03627300

NJ Certificate of Authorization No. 24GA27996400
\\langan.com\data\LA\W\data4\130121401\Project Data\Discipline\Survey\Office Data\Descriptions\130121401 CB101 Proposed Phase 1 Written Description.docx

GENERAL NOTES

- THIS SURVEY IS BASED UPON PHYSICAL CONDITIONS FOUND AT THE SUBJECT SITE, AND THE FOLLOWING REFERENCES:
 - THE TAX MAP OF THE CITY OF NEW BRUNSWICK.
 - SET OF PLANS ENTITLED "EASTON AVENUE, FRENCH STREET, ALBANY STREET AND PROPOSED SPRING STREET, CITY OF NEW BRUNSWICK, MIDDLESEX COUNTY, NEW JERSEY," PREPARED BY PAUL J. CINKO, P.E. OF T&M ASSOCIATES, DATED JANUARY 13, 2021.
 - MAP ENTITLED ENTITLED "ALBANY/SPRING LAND TITLE SURVEY, THE HUB, BLOCK NO. 17, LOT NO. 1.01, BLOCK NO. 18, LOT NOS. 4.01, 11.02 & 19.01, CITY OF NEW BRUNSWICK, MIDDLESEX COUNTY, NEW JERSEY," PREPARED BY LANGAN ENGINEERING AND ENVIRONMENTAL SERVICES, INC., DATED NOVEMBER 11, 2021, DRAWING NO. 1610.
- THE MERIDIAN OF THIS SURVEY IS REFERENCED TO THE NEW JERSEY STATE PLANE COORDINATE SYSTEM NAD 83 (2011) DERIVED USING SURVEY-GRADE GNSS EQUIPMENT.
- STREET NAMES, RIGHT OF WAY WIDTHS, BLOCK AND LOT NUMBERS ARE SHOWN IN ACCORDANCE WITH THE CITY TAX MAPS AND MAP REFERENCE B.
- PLANIMETRIC AND TOPOGRAPHIC INFORMATION SHOWN HEREON BASED ON AERIAL PHOTOGRAPHY DATED 10/08/2021 AND AERIAL MAPPING PREPARED BY LANGAN ENGINEERING AND ENVIRONMENTAL SERVICES, INC., SUPPLEMENTED BY GROUND SURVEYS BY LANGAN ENGINEERING AND ENVIRONMENTAL SERVICES, INC. DURING OCTOBER 2021. DATA SHOWN MEETS NATIONAL MAP ACCURACY STANDARDS.
- PER THE MAP ENTITLED "NATIONAL FLOOD INSURANCE PROGRAM, FIRM, MIDDLESEX COUNTY, NEW JERSEY (ALL JURISDICTIONS), PANEL 127 OF 286, MAP NUMBER 340220127, EFFECTIVE DATE: JULY 6, 2017 THE SUBJECT PROPERTY LIES WITHIN ZONE X. AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN.
- OFFSETS (IF SHOWN) ARE FOR SURVEY REFERENCES ONLY AND SHOULD NOT BE USED IN CONSTRUCTION OF ANY TYPE. LANGAN ENGINEERING AND ENVIRONMENTAL SERVICES, INC. RECOMMENDS THE PLACEMENT OF SURVEY MARKERS.
- WETLANDS, ENVIRONMENTAL AND/OR HAZARDOUS MATERIALS LOCATION, IF ANY, NOT COVERED UNDER THIS CONTRACT.
- UNLESS SPECIFICALLY NOTED HEREON, STORM AND SANITARY SEWER INFORMATION (INCLUDING PIPE INVERT, PIPE MATERIAL, AND PIPE SIZE) WAS OBSERVED AND MEASURED AT FIELD LOCATED STRUCTURES (MANHOLES/CATCH BASINS, ETC.). CONDITIONS CAN VARY FROM THOSE ENCOUNTERED AT THE TIMES WHEN AND THE LOCATIONS WHERE DATA WAS OBTAINED. DESPITE MEETING THE REQUIRED STANDARD OF CARE THE SURVEYOR CANNOT AND DOES NOT WARRANT THAT PIPE MATERIAL AND/OR PIPE SIZE THROUGHOUT THE PIPE RUN ARE THE SAME AS THOSE OBSERVED AT EACH STRUCTURE, OR THAT THE PIPE RUN IS STRAIGHT BETWEEN THE LOCATED STRUCTURES.
ADDITIONAL UTILITY (WATER, GAS, ELECTRIC ETC.) DATA MAY BE SHOWN FROM FIELD LOCATED SURFACE MARKINGS (BY OTHERS), EXISTING STRUCTURES, AND/OR FROM EXISTING DRAWINGS.
UNLESS SPECIFICALLY NOTED HEREON THE SURVEYOR HAS NOT EXCAVATED TO PHYSICALLY LOCATE THE UNDERGROUND UTILITIES. THE SURVEYOR MAKES NO GUARANTEES THAT THE SHOWN UNDERGROUND UTILITIES ARE EITHER IN SERVICE, ABANDONED OR SUITABLE FOR USE, NOR ARE IN THE EXACT LOCATION OR CONFIGURATION INDICATED HEREON.
PRIOR TO ANY DESIGN OR CONSTRUCTION THE PROPER UTILITY AGENCIES MUST BE CONTACTED FOR VERIFICATION OF UTILITY TYPE AND FOR FIELD LOCATIONS.
UNLESS NOTED BELOW SUPPLEMENTAL DOCUMENTS WERE NOT USED TO COMPLETE THE SUBSURFACE UTILITY INFORMATION SHOWN HEREON:
 - MAP REFERENCE B
- THE INTENT OF THIS PLAN IS TO CONSOLIDATE EXISTING BLOCK 17, LOT 1.01 AND BLOCK 18, LOTS 4.01, 11.02 AND 19.01 INTO A SINGLE LOT AND THEN SUBDIVIDE SAID LOT INTO PROPOSED PHASE 1 LOT AND A REMAINDER LOT. THIS PLAN IS SUBJECT TO THE VACATION OF CHURCH STREET HAVING BEEN RECORDED. THE REMAINDER OF BLOCK 17, LOT 1.01 CUT OFF BY THE DEDICATION TO THE CITY OF NEW BRUNSWICK PER DEED BOOK 6316, PAGE 375 IS NOT PART OF THIS SUBDIVISION.
- THIS PLAN NOT VALID UNLESS EMBOSSED WITH THE SEAL OR ENCRYPTED WITH THE DIGITAL SIGNATURE AND SEAL OF THE PROFESSIONAL.

LOT AREA TABLE

| EXISTING LOT AREAS: | SQUARE FEET± | ACRES± |
|---------------------|--------------|--------|
| BLOCK 17, LOT 1.01 | 49,920 | 1.146 |
| BLOCK 18, LOT 4.01 | 70,348 | 1.615 |
| BLOCK 18, LOT 11.02 | 5,420 | 0.124 |
| BLOCK 18, LOT 19.01 | 15,128 | 0.347 |
| TOTAL | 140,817 | 3.232 |
| PROPOSED LOT AREAS: | SQUARE FEET± | ACRES± |
| PHASE 1 LOT | 35,468 | 0.814 |
| REMAINDER LOT | 105,349 | 2.418 |
| TOTAL | 140,817 | 3.232 |

LEGEND OF SYMBOLS & ABBREVIATIONS

| | | | | | |
|--|---------------------------|--|---------------------------|--|---|
| | HYDRANT | | BOLLARD | | STORM DRAIN |
| | STREET LIGHT | | PEDESTRIAN WALK SIGNAL | | SANITARY LINE |
| | AREA LIGHT | | DOOR | | COMBINED UTILITY LINE |
| | SIGNAL POLE | | DOUBLE DOOR | | UNKNOWN UTILITY LINE |
| | POLE | | OVERHEAD DOOR | | GAS LINE |
| | GUY WIRE | | PARKING METER | | WATER LINE |
| | ANCHOR POLE | | METAL COVER | | ELECTRIC LINE |
| | MANHOLE | | ELECTRIC BOX | | TELEPHONE LINE |
| | MANHOLE (DRAINAGE) | | SOIL BORING | | CABLE TV LINE |
| | MANHOLE (SANITARY SEWER) | | MONITORING WELL | | STEAM LINE |
| | MANHOLE (ELECTRIC) | | TEST PIT | | FORCE MAIN |
| | MANHOLE (WATER) | | BENCHMARK | | FIBER OPTIC |
| | MANHOLE (NATURAL GAS) | | ROOF DRAIN | | REFERENCED UTILITY LINE |
| | MANHOLE (TELEPHONE) | | SPOT ELEVATION | | (TYPE AS NOTED BASED ON RECORD MAPPING) |
| | MANHOLE (FORCE MAIN) | | CONCRETE CURB | | OVERHEAD WIRE |
| | MANHOLE (STEAM) | | CONCRETE | | GUIDE RAIL/TYPE AS NOTED |
| | MANHOLE (UNKNOWN UTILITY) | | DETECTABLE PAD | | CHAIN LINK FENCE |
| | WATER VALVE | | DROP CURB | | WOOD/STOCKADE FENCE |
| | GAS VALVE | | BROKEN WHITE STRIPE | | WIRE FENCE |
| | SHRUB | | SINGLE YELLOW STRIPE | | IRON FENCE |
| | CATCH BASIN | | DOUBLE YELLOW STRIPE | | TREE LINE |
| | CLEAN OUT | | SINGLE WHITE STRIPE | | EASEMENT LINE |
| | TREE | | REINFORCED CONCRETE PIPE | | PROPERTY LINE |
| | SIGN | | DUCTILE IRON PIPE | | RIGHT-OF-WAY LINE |
| | | | CORRUGATED METAL PIPE | | CONTOUR LINE |
| | | | NO VISIBLE PIPE | | |
| | | | EDGE OF PAVEMENT | | |
| | | | LANDSCAPED AREA | | |
| | | | SURVEY BEARING & DISTANCE | | |
| | | | DEAD BEARING & DISTANCE | | |

APPLICANT/OWNER
NEW BRUNSWICK DEVELOPMENT CORPORATION
TOWER 1
120 ALBANY STREET
NEW BRUNSWICK, NJ 08901

SCALE IN FEET
0 15 30

| DATE | Description | No. |
|-----------|-------------|-----|
| REVISIONS | | |

PRELIMINARY DRAFT
2021-11-16

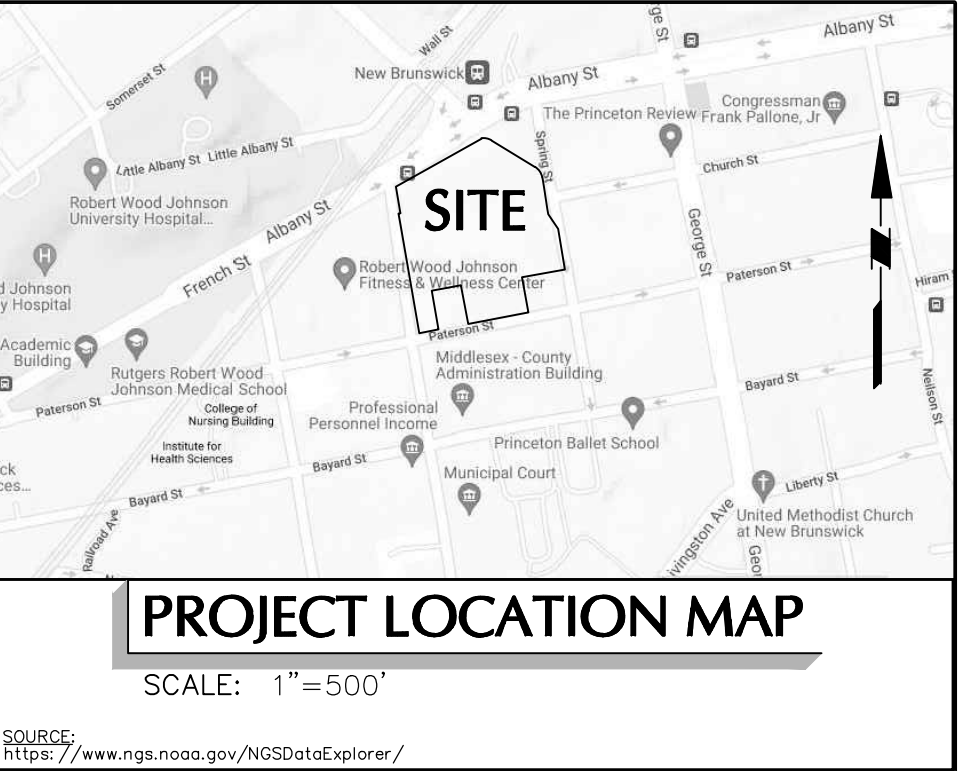
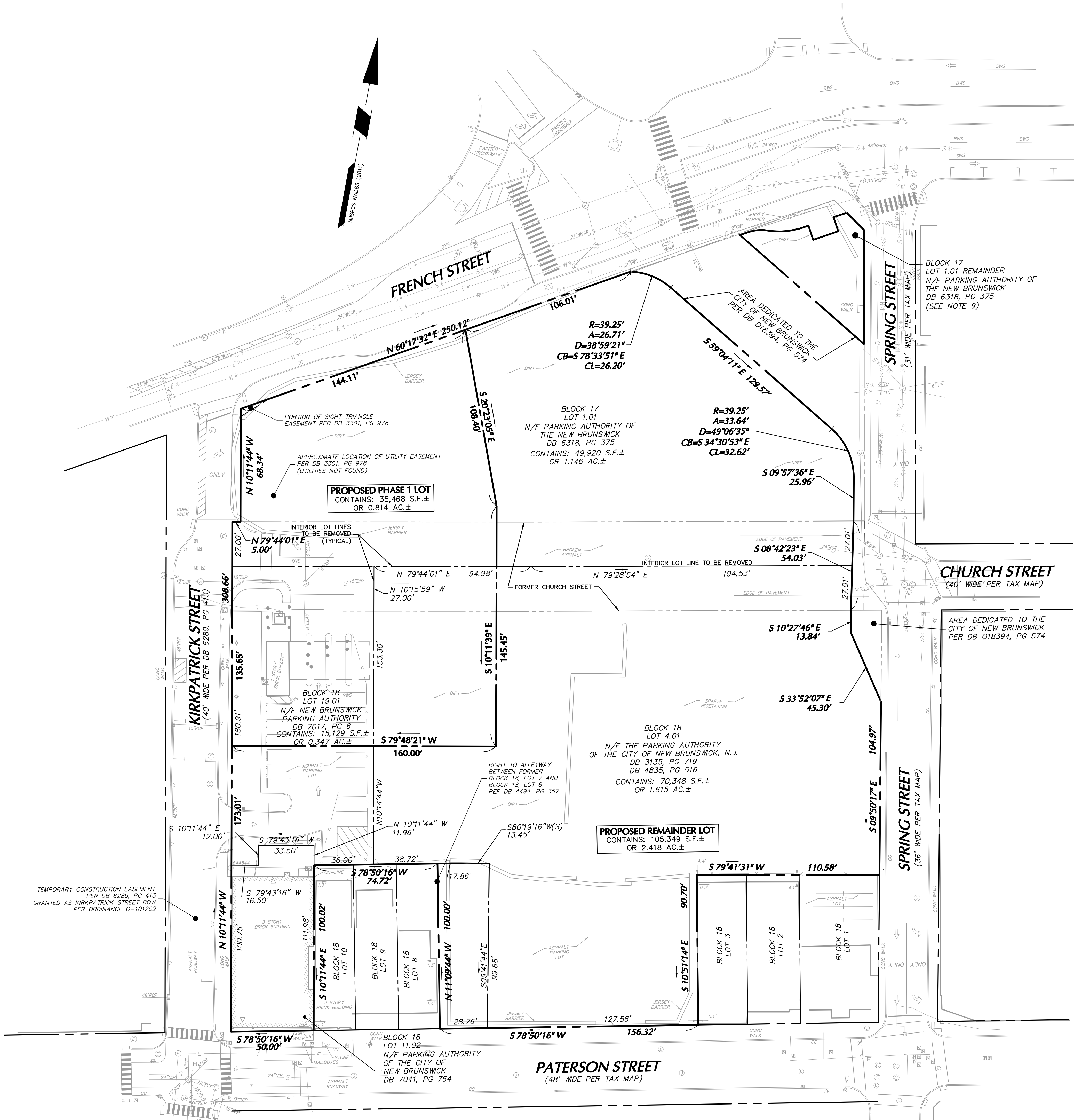
Signature: JOSEPH E. ROMANO
PROFESSIONAL LAND SURVEYOR
NJ LIC. No. 246503627300
jromano@langan.com

LANGAN
Langan Engineering and
Environmental Services, Inc.
989 Lenox Drive, Suite 124
Lawrenceville, NJ 08648
T: 609.282.8000 F: 609.282.8001 www.langan.com
NJ CERTIFICATE OF AUTHORIZATION No. 24GA27996400

Project
THE HUB
BLOCK No. 17, LOT No. 1.01,
BLOCK No. 18, LOT Nos. 4.01, 11.02 & 19.01
CITY OF NEW BRUNSWICK
MIDDLESEX COUNTY NEW JERSEY

Drawing Title
**PHASE 1 MINOR
SUBDIVISION
PLAN**

| | |
|----------------------------------|--------------------------------------|
| Project No. 130121401 | Drawing No. CB101 0101 |
| Date NOVEMBER 15, 2021 | Sheet 1 of 1 |
| Drawn By WPH | |
| Checked By RJK | |



LAND SURVEYOR CERTIFICATION

I CERTIFY THAT TO THE BEST OF MY KNOWLEDGE AND BELIEF THIS MAP AND LAND SURVEY DATED 11/16/2021 MEET THE MINIMUM SURVEY DETAIL REQUIREMENTS OF THE STATE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS AND THE MAP HAS BEEN MADE UNDER MY SUPERVISION, AND COMPLIES WITH THE "MAP FILING LAW" AND THAT THE OUTBOUND CORNER MARKERS AS SHOWN HAVE BEEN FOUND, OR SET.

I FURTHER CERTIFY THAT THE MONUMENTS AS DESIGNATED AND SHOWN HAVE BEEN SET.

| | | |
|----------------------------------|--------|------|
| SURVEYOR | (SEAL) | DATE |
| JOSEPH E. ROMANO | | |
| PROFESSIONAL LAND SURVEYOR | | |
| NEW JERSEY LIC. No. 24G503627300 | | |

APPROVED BY THE PLANNING BOARD OF MIDDLESEX COUNTY

ON _____

| | |
|-----------------|------|
| BOARD CHAIRMAN | DATE |
| BOARD SECRETARY | DATE |
| COUNTY ENGINEER | DATE |

APPROVED BY THE PLANNING BOARD OF THE CITY OF NEW BRUNSWICK

ON _____

| | |
|-----------------|------|
| BOARD CHAIRMAN | DATE |
| BOARD SECRETARY | DATE |
| BOARD ENGINEER | DATE |

DATE OF FILING _____

THIS IS TO CERTIFY THAT THE PLANNING BOARD IS THE PROPER AUTHORITY TO APPROVE AND HAS APPROVED THIS MAP. THIS MAP SHALL BE FILED IN THE MIDDLESEX COUNTY CLERK'S OFFICE ON OR BEFORE THE _____ DAY OF _____ WHICH IS 190 DAYS FROM THE DATE OF APPROVAL FOR A MINOR SUBDIVISION.

PLANNING BOARD SECRETARY _____ DATE _____

OWNER'S CONSENT - BLOCK 17, LOT 1.01 AND BLOCK 18, LOTS 4.01, 11.02, AND 19.01

THE UNDERSIGNED INDIVIDUAL, ORGANIZED UNDER THE STATE OF NEW JERSEY, HEREBY DECLARES THAT IT IS THE RECORD HOLDER OF TITLE TO THE LANDS DELINEATED ON THIS MAP AND CONSENT TO THE FILING THEREOF.

NAME _____ DATE _____

SWORN AND SUBSCRIBED TO BEFORE ME THIS _____ DAY OF _____, 2021.

NOTARY PUBLIC OF THE STATE OF NEW JERSEY _____ DATE _____

ENGINEERS CERTIFICATION

I HAVE CAREFULLY EXAMINED THIS MAP AND TO THE BEST OF MY KNOWLEDGE AND BELIEF FIND IT CONFORMS WITH THE PROVISIONS OF THE "MAP FILING LAW," RESOLUTION OF APPROVAL AND APPLICABLE MUNICIPAL ORDINANCES AND REQUIREMENTS.

| | | |
|--------------------|--------|------|
| MUNICIPAL ENGINEER | (SEAL) | DATE |
|--------------------|--------|------|

EXHIBIT D
ENVIRONMENTAL INFORMATION

List of Reports – Former Ferren Deck Site

Reports Prepared For New Brunswick Development Corporation

Phase 1 Environmental Site Assessment Report – Ferren Deck (Louis Berger, November 2013).

Preliminary Assessment and Site Investigation for Ferren Deck (Langan, December 2018).

Reports Prepared For County Of Middlesex

Draft Remedial Investigation Work Plan for Surface Lot & Paterson Street (CME Associates, February 2016).

Remedial Investigation Report for Former Middlesex County Administration Building (CME Associates, May 2016).

Draft Remedial Investigation Work Plan for Former Ferren Deck Property & Church Street (CME Associates, August 2017).

Summary Report of Findings – Enhanced Fluid Recovery Event; 2/13/18 (Petro Science, March 2018).

Updated Receptor Evaluation for Former Middlesex County Administration Building (CME Associates, 2019).

Draft Pre-Design Investigation Work Plan and Interim Remedial Measure Implementation Plan for Former Middlesex County Administration Building (CME Associates, July 2019).

Fill Use Plan – Former Middlesex County Administration Building (CME Associates, November 2019).

Enhanced In-Situ Bioremediation (EISB) Injection Work Plan – Former Middlesex County Administration Building (CME Associates, November 2019).

Draft Remedial Investigation Report Addendum And Remedial Action Workplan for Former Middlesex County Administration Building (CME Associates, January 2020).

989 Lenox Drive, Suite 124 Lawrenceville, NJ 08648 T: 609.282.8000 F: 609.282.8001

To: Christopher Paladino, DEVCO

From: Neil Rivers, LSRP

Date: 26 August 2021

Re: Environmental Summary
Former Ferren Deck Property
New Brunswick, New Jersey
Langan Project No.: 130121401

This Technical Memorandum conveys a brief summary of the environmental conditions at the former Ferren Deck property (Site). The approximately 3.9-acre site is located at 2 French Street in New Brunswick, Middlesex County, New Jersey and consists of Block 17, Lot 1.01 and Block 18, Lot 4.01.

As conveyed in the attached DRAFT Concept Layout, New Brunswick Development Corporation (DEVCO) has the ability to construct up to 1.7 million square feet on the Site. The planned first phase of the development is the construction of the building located in the northwest corner of the Site, near the intersection of French and Kirkpatrick Streets (referred herein as the Phase 1 portion of the Site).

Background/Site History

As evidenced by historical Sanborn® maps, the Site was developed prior to 1886 and was occupied by a combination of residential, commercial and light manufacturing operations as early as 1890. For most of the next 70 years, the northern portion of the property was primarily used by a variety of commercial businesses while the southern portion of the Site was mostly used for residential purposes. By 1960, a parking deck had been constructed on the southern portion of the property. By 1983, the northern portion of the parking deck was completed. The Site was used for parking and retail operations from 1983 until 2017 when the Ferren Deck Mall and associated parking garage were demolished. The Site is currently vacant.

Geological Setting

The Site is located within the Piedmont physiographic province of New Jersey. Overburden soils at the Site consist of a mixture of ancient stream sediments and saprolite derived from underlying bedrock. These soils are mixed with scattered remnants of brick and rubble from the demolition of the Ferren Deck Mall. Overburden soils are approximately 15 to 20 feet thick, but are somewhat thinner at the north end of the Site – as little as five feet thick – where the ground elevation is lower.

The underlying bedrock is classified as part of the Passaic Formation, which consists of red beds of mudstone to fine grained sandstone. Weathered bedrock is typically encountered between 10 and 20 feet below ground surface (bgs), except in the northern part of the Site where it may be encountered as shallow as five feet bgs. This weathered bedrock ranges in thickness from 10 to 15 feet in the southern portion of the Site, and is closer to 5 feet thick in the northern portion of the Site.

As part of Site redevelopment, DEVCO is currently importing clean fill material from a nearby property in New Brunswick to establish pre-construction elevations. This import material consists of saprolite and bedrock that are very similar to the existing materials at the Ferren Deck property.

Technical Memorandum

Environmental Remediation Summary
Former Ferren Deck Property
New Brunswick, New Jersey
Langan Project No.: 130121401
26 August 2021- Page 2 of 3

Shallow groundwater (within the overburden and weathered bedrock) is encountered at less than 15 feet bgs. Shallow groundwater flow is generally in a northeasterly direction, towards the Raritan River. Groundwater within the competent bedrock beneath the Site is reported to flow to the east, towards the Raritan River.

Summary of Environmental Conditions

Langan completed a Preliminary Assessment and limited Site Investigation (PA/SI) for the Site in 2018. With the exception of groundwater contamination from two off-site sources (discussed below), the PA/SI did not identify any soil or groundwater contamination at the property.

One 8,000-gallon underground storage tank (UST) is located adjacent to the Site at the northwest corner of Spring and Church Streets. The UST was reportedly used for the storage of #2 fuel oil, and is no longer in service. DEVCO plans to remove this UST concurrent with the construction of the Spring Street connector roadway.

Former Middlesex County Administration Building (NJDEP PI Number 012725)

A heating oil release from USTs formerly located at the upgradient Middlesex County Administration Building was discovered in 1989. Remedial investigations conducted by Middlesex County have demonstrated that fuel oil contamination has migrated off-site via groundwater and has impacted portions of the Site. Middlesex County hired a Licensed Site Remediation Professional (LSRP), Behram Turan of CME Associates (CME), to manage the investigation and remediation of contamination associated with this case.

Through its studies, CME has delineated the extent of light, non-aqueous phase liquids (LNAPL) and dissolved phase groundwater impacts on the Ferren Deck Site. These impacts are within the shallow groundwater (i.e., within the overburden and weathered bedrock). The groundwater plume generally extends along a north-northeasterly axis from Paterson Street to just past the extension of Church Street onto the Ferren Deck property. As depicted in the DRAFT Concept Layout (Figure CP01), the plume does not extend onto the Phase 1 portion of the Site.

Between 2017 and 2019, CME also conducted three Interim Remedial Measures (IRMs) targeted at the removal of LNAPL and areas with some of the highest concentrations of fuel oil residuals. Approximately 535 tons of contaminated soil and 12,000 gallons of contaminated groundwater and LNAPL were removed from the Site through these IRMs.

CME has also prepared a Remedial Action Workplan outlining a planned remedy for the fuel oil contamination at the Site. The remedy will include:

- excavation and removal of soil hot-spots containing free and residual product;
- vacuum-enhanced extraction to remove LNAPL from groundwater; and
- injection of chemical supplements to enhance the biological degradation of petroleum constituents in groundwater.

These remedial actions can be performed concurrent with Site redevelopment.

New Swift Cleaners (NJDEP PI Number 002989)

LANGAN

Technical Memorandum

Environmental Remediation Summary
Former Ferren Deck Property
New Brunswick, New Jersey
Langan Project No.: 130121401
26 August 2021- Page 3 of 3

Chlorinated volatile organic compounds (VOCs) including tetrachloroethylene (PCE) are reportedly present in groundwater within the competent bedrock underlying part of the Site. An upgradient former drycleaner site (New Swift Cleaners, 101 Paterson Street) is the suspected source of these compounds. The investigation and remediation of the New Swift Cleaner site is being managed by an LSRP, Marlene Lindhardt of Wood, PLC. Although plume delineation is not yet complete, sampling has confirmed that chlorinated VOCs are present in bedrock groundwater beneath the Phase 1 portion of the Site. Out of an abundance of caution, DEVCO plans to include passive vapor intrusion mitigation into the design of the Phase 1 building.

Conclusion

DEVCO has the ability to construct up to 1.7 million square feet of mixed-use development on the Site. The planned first phase of the project (Phase 1) will be the construction of an 11-story building at the northwest corner of the Site, at the intersection of French and Kirkpatrick Streets. DEVCO is currently importing clean fill material to establish pre-construction elevations.

The only known environmental impacts at the Site are associated with the two open NJDEP cases resulting from off-site sources. Both of these two off-site cases are being managed by LSRPs representing the entities responsible for remediation. It is not expected that the environmental cleanup activities associated with these two cases will delay the Phase 1 construction, nor will they materially affect the planned use of the Site. Out of an abundance of caution, DEVCO plans to include passive vapor intrusion mitigation into the design of the Phase 1 building.

LANGAN

EXHIBIT E

INSURANCE REQUIREMENTS

New Brunswick Development Corporation (Devco) shall procure and maintain, on behalf of Downtown HUB Associates, LLC and for the benefit of all members of Downtown HUB Associates, LLC, liability insurance for damages of the kinds and in the amounts hereinafter provided, from insurance companies licensed, admitted and/or approved to do business in the State of New Jersey. Indemnitor shall obtain this coverage from A- VII or better - rated companies as determined by A.M. Best Company. Downtown HUB Associates, LLC is to be the first named insured on all policies detailed below with all members of the LLC either included in the definition of insured or scheduled as an additional insured on all policies (blanket additional insured endorsement are not acceptable).

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 general aggregate and cover liability based on Products/Completed Operations; Personal and Advertising Injury (\$1,000,000); Damage to the Rented Premises (\$500,000 per each fire occurrence); Medical Expenses (\$15,000.00 for any one person); A Per Location Aggregate limit shall apply if more than one location is covered by the General Liability policy.

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) Umbrella Liability

Umbrella/Excess Liability insurance with limits of not less than \$ 5,000,000 for each occurrence and aggregate. This limit applies in excess of the Commercial General Liability, Automobile Liability and Employers' Liability, which are to be scheduled as underlying insurance. This policy will follow-form related all terms and conditions of the underling policies, but especially regarding the Per Location Aggregate (if applicable) under Commercial General Liability.

c) Pollution Liability

Site Pollution/Environmental Liability insurance with a limit of not less than \$5,000,000 for each occurrence and in the aggregate.

Where necessary, policies may be written on either a claims-made or occurrence basis. If coverage is written on a claims-made basis; Indemnitor 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. Limits indicated above may be provided through of combination of underlying and excess policies as needed.

Devco hereby waives all rights of subrogation against NJEDA for recovery of damages to the extent those damages are covered by any insurance policies required to be maintained as set forth herein. Devco agrees to obtain, at its own cost, any endorsement necessary to provide such a waiver under the applicable insurance coverage.

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

Should Devco and/or Downtown HUB Associates, LLC engage a Contractor or Subcontractor for work on the premises, the same conditions will apply under this contract to each Contractor/Subcontractor, however, the retained Subcontractor shall be required to maintain limits of liability on a per project basis with limits as deemed appropriate and approved by the members of Downtown HUB Associates, LLC.

EXHIBIT F
REQUISITION FORM

Downtown Hub Associates LLC Requisition Form

INSTRUCTIONS: This form must be used to request disbursements.

1. Downtown Hub Associates LLC

The undersigned, on behalf of Downtown Hub Associates LLC hereby requisitions the following wire/check from the New Jersey Economic Development Authority:

Payee

Downtown Hub Associates LLC

Disbursement Request Amount

\$

For disbursements related to land purchase (in fee or by ground lease) up to \$6,000,000 or for use of initial pre-development and development costs direct expenses incurred up to \$4, 000,000.

Purchase Security Agreement and Mortgage Date (up to \$6 Million) :

Pre Development and Development Cost

Invoice Date (up to \$4 Million) :

(Controller/MIS Use Only)

DateCheck #

CERTIFICATION

The undersigned, a duly authorized representative of Downtown Hub Associates LLC, hereby certifies to the Authority on his/her behalf and on behalf of Downtown Hub Associates LLC, that:

1. This requisition and or all requisitions previously disbursed to or on behalf of Downtown Hub Associates LLC have been expended to pay for authorized expenses as outlined in the Limited Liability Company Agreement of Downtown Hub Associates LLC as of December ___, 2021 (the “Agreement”); and
2. Downtown Hub Associates LLC has used the funds to pay the cost of acquiring the Property(in fee or by ground lease (\$6,000,000)and or for use for initial pre-development and development costs for the Project (\$4,000,000) . The pre-development and development costs shall be limited to direct costs for architectural and engineering design; initial site development including infrastructure, utility relocation, demolition of existing on-site structures and removal of foundation and debris; and the importation and preparation of fill material. Such costs may also include reimbursements of DEVCO or the Company for costs incurred by DEVCO or the Company LLC after on or about August 1, 2021, based upon submitted and satisfactory invoices for early project activity.

Capitalized terms used in this Certification shall have the same meaning as ascribed to them in the Agreement that relate to the Agreement unless expressly indicated otherwise.

In no instance shall the NJEDA disburse more than \$10,00,000.00

(Date)

Downtown Hub Associates LLC

BY:

Name:

(Signature)

PRINT:

(Name and Title)

DO NOT WRITE BELOW THIS LINE – FOR USE BY
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY ONLY

| | | |
|---|--|--------------|
| Name of Borrower: Downtown Hub Associates LLC | Total Amount of Investment: \$10,000,000 | \$10,000,000 |
| Date & Time Wire Needed: | Total Amount of Previous Wire/Check(s): | \$ |
| | Total Amount of This Wire/Check: | \$ |
| | Cumulative Total Amount of all Wire/Check: | \$ |
| Reviewed by: | Approved by: | |
| Date: | Date: | |

Attach applicable wiring instructions and supporting documentation (executed agreements/invoices) to this document .

Attach applicable wiring instructions and supporting documentation (executed agreements/invoices) to this document .

NEW BRUNSWICK PARKING AUTHORITY

as mortgagor
(Mortgagor)

to

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

as mortgagee
(Mortgagee)

MORTGAGE

(NEW JERSEY)

Dated: As of _____, 2021

Location: Albany, Church and Kirkpatrick Streets
more commonly known as portions of parcels known as
Block 17, Lot 1.01 and Block 18, Lots 4.01 and 19.01
on the Tax Map of New Brunswick, New Jersey

County: Middlesex

PREPARED BY AND UPON
RECORDATION RETURN TO:

MORTGAGE

This **MORTGAGE** (this “**Mortgage**”) is made as of the _____ day of _____, 2021, by **NEW BRUNSWICK PARKING AUTHORITY**, a public body corporate and politic of the State of New Jersey, having its office at 106 Somerset Street, Gateway Village, 6th Floor, New Brunswick, New Jersey 08901 (“**Mortgagor**”), in favor of **NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**, a body corporate and politic of the State of New Jersey, having an address at 36 West State Street, Trenton, New Jersey 08608 (“**Mortgagee**”).

WITNESSETH:

WHEREAS, Mortgagor is the owner of those certain vacant tracts or parcels of land situated in the City of New Brunswick (the “**City**”), County of Middlesex, State of New Jersey, located at Albany, Church and Kirkpatrick Streets, more commonly known as portions of parcels known as Block 17, Lot 1.01 and Block 18, Lots 4.01 and 19.01 on the Tax Map of New Brunswick, New Jersey, as depicted and described on Exhibit A hereto (as to be expanded by the vacation by the City of an adjacent street, the “**Land**”); and

WHEREAS, Mortgagor and Downtown HUB Associates LLC (“**DHA**”) are parties to a Purchase and Sale Agreement dated _____, 2021 for the purchase of the Land (“**PSA**”) which PSA provides for the payment by DHA of Six Million Dollars (\$6,000,000) for the acquisition of the Land (the “**Initial Purchase Price**”) prior to Mortgagor’s conveyance of the Land to DHA; and

WHEREAS, the PSA requires Mortgagor to file an application for a subdivision approval in order to create the lot that will comprise the Land within ninety (90) days of the payment of the Initial Purchase Price, following which, provided approvals from all applicable governmental authorities has been obtained, Mortgagor is to convey the Land to DHA; and

WHEREAS, Mortgagee is a member of DHA, through which it has contributed the Initial Purchase Price and, in order to protect the public investment of funds represented by such contribution, Mortgagee desires to receive a mortgage enabling Mortgagee to acquire title to the Land in the event Mortgagor fails to convey it to DHA as required; and

WHEREAS, pursuant to the PSA, as collateral security for Mortgagor's agreement to convey title to the Land to DHA, including by ground lease, as set forth in the PSA (hereinafter referred to as “**Mortgagor's Conveyance Obligations**”), Mortgagor shall execute and deliver to Mortgagee this Mortgage; and

WHEREAS, pursuant to the operating agreement for DHA, both DHA and the other member of DHA, New Brunswick Development Corporation (“**DEVCO**”), have certain obligations (“**Compliance Obligations**”) that, if unmet after notice and cure (“**Events of Non-Compliance**”), entitle Mortgagee to take title to the Property, including by foreclosure of this Mortgage if necessary.

NOW, THEREFORE, IN CONSIDERATION of the sum of ONE DOLLAR (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to secure Mortgagor's Conveyance Obligations and the performance of the Compliance Obligations, Mortgagor does hereby bargain, sell, mortgage, transfer, grant, convey, assign and warrant to Mortgagee, its successors and assigns the following property (collectively, the "**Property**"):

(1) All of Mortgagor's present and future estate, right, title and interest in and to the Land, as more particularly described in **Exhibit A** attached hereto and made a part hereof;

(2) All other rights, privileges and interest of Mortgagor in the Land, including, without limitation, all proceeds, claims and rights of Mortgagor arising on account of any damage to or casualty loss relating to the Land, or any award Mortgagor may otherwise be entitled to in any condemnation proceedings with respect to the Land or any part thereof, and all causes of action and recoveries for any loss or diminution in the value of the Land on account thereof (subject to Mortgagor's reimbursement and termination right in the PSA); and

(3) All permits, licenses, approvals and certificates from federal, state or local authorities of any type relating to ownership, development, operation, maintenance, construction, sale, or use of the Land, and all rights, now existing or hereafter acquired, to receive utility services with respect to the Land.

TO HAVE AND TO HOLD the Property, for the benefit of Mortgagee, its successors and assigns, subject, however, to the terms, covenants and conditions contained herein.

PROVIDED, HOWEVER, if Mortgagor shall perform the Mortgagor's Conveyance Obligations in accordance with, and at the time and in the manner stipulated in, the PSA, then this Mortgage and all the properties, interests and rights hereby granted, encumbered, transferred or assigned shall be released and discharged of record in a timely fashion by Mortgagee in accordance with the laws of the State of New Jersey.

FURTHER PROVIDED, HOWEVER, if DHA shall not close on the acquisition of the Property because of an uncured default by DHA under the PSA, Mortgagee shall, within a commercially reasonable period, either (a) provide Mortgagor with a discharge of this Mortgage in recordable form, simultaneously with Mortgagor's refund of the Initial Purchase Price to Mortgagee or (b) request a quitclaim deed to the Property from Mortgagor, which Mortgagor shall deliver within fifteen (15) days.. In the event that a party fails to act as required, and the other party seeks judicial remedies for such failure, the first party shall pay the other party's reasonable legal fees in connection therewith.

MORTGAGOR HEREBY COVENANTS AND AGREES FOR THE BENEFIT OF MORTGAGEE AS FOLLOWS:

ARTICLE I

COVENANTS

1.01 PERFORMANCE BY MORTGAGOR; INCORPORATION OF DOCUMENTS BY REFERENCE. Mortgagor shall perform the Mortgagor's Conveyance Obligations in accordance with, and at the time and in the manner stipulated in, the PSA, and shall keep, perform and observe each and every other obligation, covenant and agreement of Mortgagor to Mortgagee set forth in this Mortgage.

1.02 TITLE. Mortgagor has good, marketable and insurable fee simple title to the Land, free and clear all liens and encumbrances, except the Permitted Encumbrances set forth on **Exhibit B** hereto.

ARTICLE II

DEFAULTS AND REMEDIES

2.01 EVENTS OF DEFAULT. Any of the following shall be deemed to be a material breach of Mortgagor's covenants herein and shall constitute a default hereunder (each an "**Event of Default**"):

(a) The failure of Mortgagor to perform the Mortgagor's Conveyance Obligations in accordance with the PSA, subject to the satisfaction or waiver of all applicable conditions precedent thereto, and such failure remains uncured for a period of thirty (30) days after Mortgagor's receipt of written notice thereof from Mortgagee;

(b) The filing by Mortgagor of a voluntary petition or application for relief in bankruptcy or Mortgagor's adjudication as a bankrupt or insolvent, or the filing by Mortgagor of any petition, application for relief or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law, code or regulation relating to bankruptcy, insolvency or other relief for debtors, or Mortgagor's seeking or consenting to or acquiescing in the appointment of any trustee, receiver or liquidator of itself or of all or any substantial part of the Property, or the making of any general assignment for the benefit of creditors, or the admission in writing by Mortgagor of its inability to pay its debts generally as they become due; and

(c) The filing against Mortgagor of any of an involuntary petition or application for relief in bankruptcy, insolvency, reorganization or a filing for the appointment of a receiver or trustee, or for a petition for an arrangement, and any such action or proceeding is not dismissed, stayed or discharged within ninety (90) days of the commencement thereof.

DEVCO shall be permitted to intervene as an interested party in any action taken by Mortgagee to foreclose the lien of this Mortgage in connection with the occurrence of an Event of Default.

2.02 EVENTS OF NON-COMPLIANCE. The occurrence of an Event of Non-Compliance, while not a breach of Mortgagor's covenants herein, shall nonetheless permit Mortgagee to take those actions hereunder that it is entitled to take upon the occurrence of an Event of Default. If Mortgagee or any successor in title takes title to the Land as a result of an Event of Non-Compliance, Mortgagee shall remain responsible for payment to Mortgagor of the Additional Purchase Price under the PSA. DEVCO shall be permitted to intervene as an interested party in any action taken by Mortgagee to foreclose the lien of this Mortgage in connection with the occurrence of an Event of Non-Compliance not caused by DEVCO. This Section shall survive the closing of title on the Property and any action taken by Mortgagee as a result of an Event of Non-Compliance herein.

2.03 REMEDIES UPON DEFAULT. Upon the happening and continuation of any Event of Default by Mortgagor, as seller under the PSA, beyond any applicable cure periods, Mortgagee may forthwith take any action as the law may allow, at law or in equity, for the enforcement of this Mortgage and realization on the Property, including instituting an action of mortgage foreclosure in accordance with the law of the State of New Jersey. For purposes of this Mortgage, Mortgagor shall not be deemed to be in default hereunder unless the purchaser under the PSA is free from default thereunder and provided the Mortgagor has been afforded a period of time not to exceed thirty (30) days following receipt of a written default notice from DHA (as Buyer under the PSA) or Mortgagee to cure the default set forth in any written notice delivered to Mortgagor (as Seller under the PSA) from Mortgagee or DHA (as Buyer under the PSA).

2.04 APPLICATION OF PROCEEDS OF SALE. In the event of a sale of the Property pursuant to a foreclosure action, the proceeds of said sale, to the extent permitted by law, shall be applied, in such order as Mortgagee shall determine, to the actual expenses of such sale and of all proceedings in connection therewith, including reasonable attorney's fees and expenses, taxes, charges or other impositions, insurance premiums, liens, and other charges and expenses relating thereto.

ARTICLE III

GENERAL COVENANTS

3.01 NO WAIVER. No single or partial exercise by Mortgagee, or delay or omission in the exercise by Mortgagee, of any right or remedy under this Mortgage or the PSA shall preclude, waive or limit any other right or remedy or the further exercise thereof. Mortgagee shall at all times have the right to proceed against any portion of, or interest in, the Property in such manner as Mortgagee may deem fit without waiving any other right or remedy with respect to any other portion of the Property.

ARTICLE IV

MISCELLANEOUS COVENANTS

4.01 REMEDIES CUMULATIVE. No right, power or remedy conferred upon or reserved to Mortgagee pursuant to this Mortgage is intended to be exclusive of any other right,

power or remedy, but shall be cumulative and concurrent and in addition to any other right, power and remedy given hereunder now or hereafter existing under applicable law.

4.02 NOTICES. Any demand, notice or other communication required or permitted to be given hereunder shall be in writing, and shall be delivered personally, by a recognized overnight national courier service (such as Federal Express) for next business day delivery) or by certified mail, return receipt requested, first-class postage prepaid to the parties at the addresses set forth in the preamble of this Mortgage (or to such other addresses as the parties may specify by due notice to the other).

Any notice delivered to a party's designated address by (a) personal delivery, (b) recognized overnight national courier service, or (c) certified mail, return receipt requested, shall be deemed to have been received by such party at the time the notice is delivered to such party. Confirmation by the courier delivering any notice given pursuant to this Section 4.02 shall be conclusive evidence of receipt of such notice. Each party hereby agrees that it will not refuse or reject delivery of any notice given hereunder, that it will acknowledge, in writing, receipt of the same upon request by any other party and that any notice rejected or refused by it shall be deemed for all purposes of this Mortgage to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service. Any notice given by an attorney for a party shall be effective for all purposes.

4.03 SUCCESSORS AND ASSIGNS. This Mortgage applies to, inures to the benefit of, and binds Mortgagor and Mortgagee and their successors and permitted assigns.

4.04 APPLICABLE LAW. This Mortgage shall be construed and enforced in accordance with the laws of the State of New Jersey. All tort claims against Mortgagee shall be governed by the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., and all contract claims against Mortgagee shall be governed by the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1.

4.05 CAPTIONS. The captions are inserted only as a matter of convenience of reference, and in no way define, limit, or describe the scope or intent of this Mortgage, nor in any way affect this Mortgage.

4.06 NO MODIFICATIONS. This Mortgage may not be changed, amended or modified, except in a writing expressly intended for such purpose and executed by Mortgagor and Mortgagee.

4.07 DEFINED TERMS. Any defined term used herein and not defined herein shall have the meaning ascribed thereto in the Master Lease.

4.08 CONSENT; DISCRETION. Whenever consent, permission or other discretionary action is a condition for action on the part of either party hereto, same shall be reasonably exercised and shall not be unreasonably delayed or denied by either party to the other.

MORTGAGOR ACKNOWLEDGES THAT MORTGAGOR HAS RECEIVED,
WITHOUT CHARGE, A TRUE AND CORRECT COPY OF THIS MORTGAGE.

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed by its duly authorized representative as of the date and year first written above.

NEW BRUNSWICK PARKING AUTHORITY

By: _____

ACKNOWLEDGMENT

STATE OF NEW JERSEY)
)
COUNTY OF _____)

BE IT REMEMBERED, that on this ____ day of _____, 2021, before me, the subscriber, personally appeared _____ who, I am satisfied, is the person who executed the within Mortgage as _____ of **NEW BRUNSWICK PARKING AUTHORITY**, a body corporate and politic of the State of New Jersey,, and thereupon acknowledged that he signed and delivered the same as the voluntary act and deed of said body.

Notary Public

My Commission Expires:

EXHIBIT A

LEGAL DESCRIPTION AND LAND DEPICTION

17 November 2021
130121401

**WRITTEN DESCRIPTION
PROPOSED PHASE 1 LOT
CITY OF NEW BRUNSWICK
MIDDLESEX COUNTY, NEW JERSEY**

Beginning at a point where the southerly line of French Street (62 feet wide per tax map) is intersected by the easterly line of Kirkpatrick Street as established by Ordinance 101202 as shown on a plan entitled "Phase 1 Minor Subdivision Plan, The Hub, Block No. 17, Lot No. 1.01, Block No. 18, Lot Nos. 4.01, 11.02 & 19.01, City of New Brunswick, Middlesex County, New Jersey", prepared by Langan Engineering and Environmental Services, Inc., dated November 16, 2021, Drawing No. CB101, and from said Point of Beginning running; thence

1. North 60°17'32" East, a distance of 144.11 feet, along said southerly line of French Street, to a point where said southerly line is intersected by the division line between Proposed Phase 1 Lot and Proposed Remainder Lot as shown on said plan; thence the following three courses along said division line:
2. South 20°23'05" East, a distance of 108.40 feet to a point; thence
3. South 10°11'39" East, a distance of 145.45 feet to a point; thence
4. South 79°48'21" West, a distance of 160.00 feet to a point on the aforementioned easterly line of Kirkpatrick Street; thence the following three courses along said easterly line:
5. North 10°11'44" West, a distance of 135.65 feet to a point;
6. North 79°44'01" East, a distance of 5.00 feet to a point; thence
7. North 10°11'44" West, a distance of 68.34 feet to the Point of Beginning.

Encompassing an area of 35,468 square feet or 0.814 acres, more or less.

The above description was prepared in accordance with a plan entitled, "Phase 1 Minor Subdivision Plan, The Hub, Block No. 17, Lot No. 1.01, Block No. 18, Lot Nos. 4.01, 11.02 & 19.01, City of New Brunswick, Middlesex County, New Jersey", prepared by Langan Engineering and Environmental Services, Inc., dated November 16, 2021, Drawing No. CB101.

Joseph E. Romano
Professional Land Surveyor
New Jersey License No. 24GS03627300

NJ Certificate of Authorization No. 24GA27996400
\\langan.com\data\LA\W\data4\130121401\Project Data\Discipline\Survey\Office Data\Descriptions\130121401 CB101 Proposed Phase 1 Written Description.docx

1. THIS SURVEY IS BASED UPON PHYSICAL CONDITIONS FOUND AT THE SUBJECT SITE, AND THE FOLLOWING REFERENCES:

2. A. THE TAX MAP OF THE CITY OF NEW BRUNSWICK;

3. B. SET OF PLANS ENTITLED "EASTON AVENUE, FRENCH STREET, ALBANY STREET AND PROPOSED SPRING STREET, CITY OF NEW BRUNSWICK, MIDDLESEX COUNTY, NEW JERSEY," PREPARED BY PAUL J. MURPHY FOR THE TAX MAP COMMISSION, JANUARY 15, 2023;

4. C. MAP ENTITLED "ALT/ANSPS (LAND) TITLE SURVEY, THE HUB, BLOCK 107, LOT 1 NO. 101, BLOCK NO. 18, LOT NOS. 401, 11.02 & 19.01, CITY OF NEW BRUNSWICK, MIDDLESEX COUNTY, NEW JERSEY," PREPARED BY LANGEAN ENGINEERING AND ENVIRONMENTAL SERVICES, INC., DATED NOVEMBER 11, 2021, DRAWING NO. 1101;

5. D. THE MERIDIAN OF THIS SURVEY IS REFERENCED TO THE NEW JERSEY STATE PLANE COORDINATE SYSTEM NAD 83 (2011) DERIVED BY GROUND SURVEY AND GRADE GNS EQUIPMENT.

6. E. STREET NAMES (CITY OF NEW BRUNSWICK) AND LOT NUMBERS ARE SHOWN IN ACCORDANCE WITH THE CITY TAX MAPS AND MAP REFERENCE B.

7. A. PLANIMETRIC AND TOPOGRAPHIC INFORMATION SHOWN HEREON BASED ON AERIAL PHOTOGRAPHY DATED 10/08/2021 AND AERIAL MAPPING PREPARED BY LANGEAN ENGINEERING AND ENVIRONMENTAL SERVICES, INC. DURING OCTOBER 2021. DATA SHOWN MEETS NATIONAL MAP ACCURACY STANDARDS.

8. PER THE MAP ENTITLED "NATIONAL FLOOD INSURANCE PROGRAM, FIRM, MIDDLESEX COUNTY, NEW JERSEY, FIRM NO. 17010, DATED 07/16/2010" THE SUBJECT PROPERTY LIES WITHIN ZONE XA. AREAS DETERMINED TO BE OUTSIDE OF THE NATIONAL FLOOD INSURANCE PROGRAM ARE SHOWN WITH DASHED LINES.

9. OFFSETS (IF SHOWN) ARE FOR SURVEY REFERENCES ONLY AND SHOULD NOT BE USED IN CONSTRUCTION OF ANY TYPE. LANGEAN ENGINEERING AND ENVIRONMENTAL SERVICES, INC. ASSUMES THE PLACEMENT OF SURVEY MARKS.

10. WETLANDS, ENVIRONMENTAL AND/OR HAZARDOUS MATERIALS LOCATION, IF ANY, NOT COVERED UNDER THIS CONTRACT.




















































11. UNLESS SPECIFICALLY NOTED HEREON, STORM AND SANITARY SEWER INFORMATION (INCLUDING PIPE INVERT, PIPE MATERIAL, AND PIPE SIZE) WAS OBSERVED AND MEASURED AT FIELD LOCATIONS. LOCATION AND DEPTH OF ANY UNRECORDED CONDITIONS CAN VARY FROM THOSE ENCOUNTERED AT THE TIMES WHEN AND THE LOCATIONS WHERE DATA WAS OBTAINED. DESPITE MEETING THE REQUIREMENTS OF THE STANDARD AND SPECIFICATIONS, THE SURVEYOR DOES NOT WARRANT THE MATERIAL AND/OR PIPE SIZE INFORMATION OF THE PIPE RUN ARE THE SAME AS THOSE OBSERVED AT THE FIELD LOCATIONS OR THAT THE INFORMATION IS COMPLETE.

12. ADDITIONAL UTILITY (WATER, GAS, ELECTRIC ETC.) DATA MAY BE SHOWN FROM FIELD LOCATIONS SURFACE MARKINGS (BY OTHERS), EXISTING STRUCTURES, AND/OR FROM EXISTING DRAWINGS.

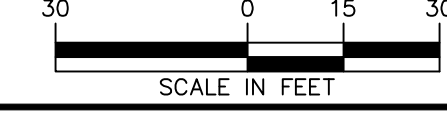
13. UNLESS SPECIFICALLY NOTED HEREON THE SURVEYOR HAS NOT EXCAVATED TO PHYSICALLY LOCATE AND VERIFY THE UTILITY LOCATION. SINGLE LOT AND THE SURROUNDING SAG LOT INTO PROPOSED PHASE 1 LOT AND A REMAINDER LOT THIS PLAN IS SUBJECT TO THE VACATION OF CHURCH STREET HAVING BEEN DEDICATED TO THE CITY OF NEW BRUNSWICK. THE CITY OF NEW BRUNSWICK HAS THE RIGHT TO VACATE THE CITY OF NEW BRUNSWICK PER DEED BOOK 6318, PAGE 375 IS NOT PART OF THIS SUBDIVISION.

14. THIS PLAN WILL NOT VALID UNLESS EMBOSSED WITH THE SEAL OR ENCRYPTED WITH THE DIGITAL SIGNATURE AND SEAL OF THE PROFESSIONAL.

LEGEND OF SYMBOLS & ABBREVIATIONS

| | | | | | |
|---|---------------------------|---|--------------------------|---|---------------------------|
|  | HYDRANT |  | BOLLARD |  | SPOT BEARING |
|  | STREET LIGHT |  | PEDESTRIAN WALK SIGNAL |  | DEAD BEARING |
|  | AREA LIGHT |  | DOOR |  | DOUBLE DOOR |
|  | SIGNAL POLE |  | OVERHEAD DOOR |  | PARKING METER |
|  | POLE |  | METAL COVER |  | ELECTRIC BOX |
|  | GUY WIRE |  | SOIL BORING |  | MONITORING WELL |
|  | ANCHOR POLE |  | TEST PIT |  | BENCHMARK |
|  | MANHOLE |  | ROOF DRAIN |  | SPOT ELEVATION |
|  | MANHOLE (DRAINAGE) |  | CONCRETE PAD |  | CONCRETE CURB |
|  | MANHOLE (SANITARY SEWER) |  | DROP CURB |  | BROKEN WHITE STRIPE |
|  | MANHOLE (ELECTRIC) |  | SINGLE YELLOW STRIPE |  | DOUBLE YELLOW STRIPE |
|  | MANHOLE (WATER) |  | REINFORCED CONCRETE PIPE |  | SINGLE WHITE STRIPE |
|  | MANHOLE (NATURAL GAS) |  | DUCTILE IRON PIPE |  | CORRUGATED METAL PIPE |
|  | MANHOLE (TELEPHONE) |  | NO VISIBLE PIPE |  | EDGE OF PAVEMENT |
|  | MANHOLE (FORCE MAIN) |  | LANDSCAPED AREA |  | SURVEY BEARING & DISTANCE |
|  | MANHOLE (STEAM) |  | SIGHT | | |
|  | MANHOLE (UNKNOWN UTILITY) | | | | |
|  | WATER VALVE | | | | |
|  | GAS VALVE | | | | |
|  | SHRUB | | | | |
| | CATCH BASIN | | | | |
| | CLEAN OUT | | | | |
| | TREE | | | | |
| | SIGN | | | | |

APPLICANT/OWNER
NEW BRUNSWICK DEVELOPMENT CORPORATION
TOWER 1
120 ALBANY STREET
NEW BRUNSWICK, NJ 08901



BY HEREBY STATE THAT THIS PLAN IS BASED ON A FIELD SURVEY MADE BY ME OR UNDER MY IMMEDIATE SUPERVISION IN ACCORDANCE WITH NJAC 15:40-5.1 "PREPARATION OF LAND SURVEYS" AND TO THE BEST OF MY PROFESSIONAL KNOWLEDGE, INFORMATION AND BELIEF, AND MY PROFESSIONAL CONSCIENCE, ACCURATELY REPRESENTS THE CONDITIONS FOUND ON THE DATE OF THE FIELD SURVEY AT THE SUBJECT PROPERTY

PRELIMINARY DRAFT

2021-11-16

Signature: _____

JOSEPH E. ROMANO
PROFESSIONAL LAND SURVEYOR
NJ Lic. No. 246S03627300
jromano@angon.com

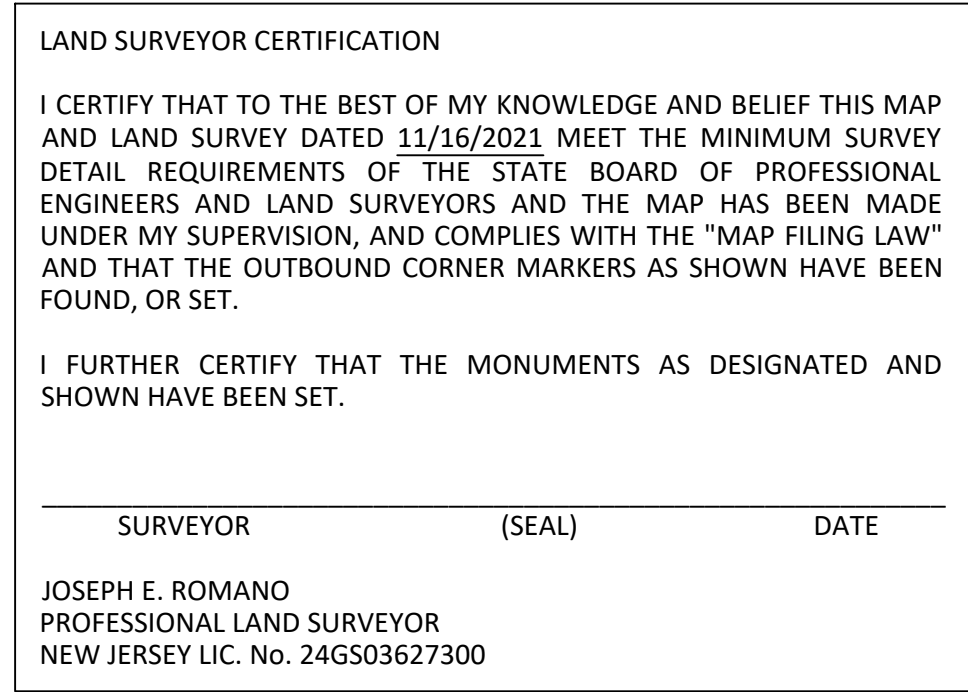
Project

THE HUB

BLOCK No. 17, LOT No. 1.01,
BLOCK No. 18, LOT Nos. 4.01, 11.02 & 19.01
CITY OF NEW BRUNSWICK

MIDDLESEX COUNTY NEW JERSEY

| | |
|----------------------------------|-----------------------------|
| Project No. 130121401 | Drawing No. |
| Date NOVEMBER 15, 2021 | CB101 0101 |
| Drawn By WPH | |
| Checked By RJK | |
| | Sheet 1 of 1 |



| | | |
|---|------|--|
| DATE OF FILING | | |
| <p>THIS IS TO CERTIFY THAT THE PLANNING BOARD IS THE PROPER AUTHORITY TO APPROVE AND HAS APPROVED THIS MAP. THIS MAP SHALL BE FILED IN THE MIDDLESEX COUNTY CLERK'S OFFICE ON OR BEFORE THE _____ DAY OF _____ WHICH IS 150 DAYS FROM THE DATE OF APPROVAL FOR A MINOR SUBDIVISION.</p> | | |
| PLANNING BOARD SECRETARY | DATE | |

OWNER'S CONSENT - BLOCK 17, LOT 1.01 AND BLOCK 18, LOTS 4.01, 11.02, AND 19.01

THE UNDERSIGNED INDIVIDUAL ORGANIZED UNDER THE STATE OF NEW JERSEY, HEREBY DECLARES THAT IT IS THE RECORD HOLDER OF TITLE TO THE LANDS DELINEATED ON THIS MAP AND CONSENT TO THE FILING THEREOF.

| | |
|------|------|
| NAME | DATE |
|------|------|

SWORN AND SUBSCRIBED TO BEFORE ME THIS _____ DAY OF _____, 2021.

| | |
|--|------|
| NOTARY PUBLIC OF THE STATE OF NEW JERSEY | DATE |
|--|------|

ENGINEERS CERTIFICATION

I HAVE CAREFULLY EXAMINED THIS MAP AND TO THE BEST OF MY KNOWLEDGE AND BELIEF FIND IT CONFORMS WITH THE PROVISIONS OF THE "MAP FILING LAW," RESOLUTION OF APPROVAL AND APPLICABLE MUNICIPAL ORDINANCES AND REQUIREMENTS.

| | | |
|--------------------|--------|------|
| MUNICIPAL ENGINEER | (SEAL) | DATE |
|--------------------|--------|------|

PROJECT NO. 130121401
LANGAN

EXHIBIT B

**PERMITTED EXCEPTIONS
(To the extent applicable to the property)**

**SCHEDULE B – PART II
EXCEPTIONS**

Issuing Office File No. TA-152753

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

The Policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. Notwithstanding any provision of the policy to the contrary, any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land.
2. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I "Requirements" are met.
3. Rights or Claims or interest of parties in possession of the land not shown by the public record.
4. Easements, or claims of easements, not shown by the public record.
5. Any liens or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
6. Taxes, charges, assessments and utilities: See Attached
7. Subject to added or omitted assessments pursuant to N.J.S.A. 54:4-63.1 et seq.
8. Subject to N.J. Superior Court, U.S. District Court, U.S. Bankruptcy Court and U.S. Patriot Name Searches. (ATTACHED)
9. Amount of acreage or quantity of land is not insured.
10. Subsurface conditions and/or encroachments not disclosed by an instrument of record. (Fee Policy only).
11. Subject to the following Mortgages: NONE
12. Easements to PSE&G as set forth in Deed Book 3265, Page 321.
13. Sight Triangle Easement as set forth in Deed Book 3301, Page 978; 6318, Page 375.
14. Easement Agreement as set forth in Deed Book 3331, Page 534.
15. Temporary Construction Easement as set forth in Deed Book 6289, Page 413.

Schedule B - Part II— Continued

Issuing Office File No. TA-152753

16. Aerial easement as shown on the current tax map, City of New Brunswick. (NO RECORDED EASEMENT WAS FOUND IN THE MIDDLESEX COUNTY CLERK'S OFFICE).
17. Easements as set forth in Deed Book 4494, Page 357.
18. Terms and Conditions, Easement, Dedications and Restrictions as set forth in Resolution of the New Brunswick Parking Authority recorded in Official Record 18394 Page 574.
19. Subject to Restrictive Covenants as set forth in Deed Book 7017 Page 6.
20. Subject to the results of a Tideland Search, which discloses: unclaimed.

COPIES OF EXCEPTIONS ARE ATTACHED

END SCHEDULE B – SECTION II

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: December 8, 2021

RE: Product No. 00258571
miR Scientific, LLC - First Amendment to the Lease Agreement
New Jersey Bioscience Center, 685 U.S. Highway 1 South (Building 4)

Summary

I request that the Members approve the First Amendment to the Lease Agreement with miR Scientific, LLC (“miR”) which will modify and extend Lease dates and related requirements relating to an early Lease termination option right afforded to miR. The Members must approve this amendment because the existing delegated authority does not permit staff to authorize these amendments.

Background

In May 2021, the Members approved executing a 63-month Lease Agreement (“Lease”) with miR for 14,662 rentable square feet of laboratory and office space on the first floor of 685 South Route 1, North Brunswick at the New Jersey Bioscience Center. The lease was executed on June 16, 2021 and miR undertook and completed its planned Tenant Improvements and commenced occupancy in summer 2021.

miR has been working towards commercializing its Sentinel Prostate TestTM for the detection, classification and monitoring of prostate cancer as a laboratory developed test and to secure its Clinical Laboratory Improvement Amendments (“CLIA”) certification/approval from the New Jersey Department of Health. The Lease includes an early lease termination option (“Termination Option”) and penalty payment section in the event miR was unable to obtain CLIA certification/approval. miR was required to use commercially reasonable efforts to file applications and secure CLIA certification/approval by December 1, 2021 (“CLIA Date”).

miR has informed the Authority that they submitted the CLIA application to the New Jersey Department of Health (“DOH”) on August 29, 2021. In order for DOH to deem the CLIA application complete and for DOH to perform an inspection of the miR labs, miR initially must complete proficiency testing of laboratory samples. miR encountered equipment calibration issues due to humidity issues which delayed this required proficiency testing and thus did not allow miR to obtain CLIA certification/approval by the CLIA Date. miR has now addressed this issue by purchasing de-humidifier systems and plans to schedule DOH’s inspection in January 2022. miR has requested that the CLIA Date and the Termination Option written notice date in the Lease be extended to from December 1, 2021 until March 1, 2022 and the Lease Early Termination Date be extended from January 31, 2022 to April 30, 2022. Additionally, other Lease dates and language

related to the Termination Option including miR restoration obligations will be modified accordingly as set forth in the attached First Amendment to Lease Agreement.

Recommendation

In summary, I request the Members approve the First Amendment to the Lease Agreement with miR which will modify and extend Lease dates and related requirements relating to the CLIA certification and the Lease Termination Option, as outlined in this memo, on final terms subject to approval by the Chief Executive Officer and the Attorney General's Office.

A handwritten signature in blue ink, appearing to read 'T. Sullivan', is positioned above a horizontal line.

Tim Sullivan, CEO

att: miR First Lease Amendment
Prepared by: Liza Nolan

FIRST AMENDMENT TO LEASE AGREEMENT

This First Amendment to Lease Agreement (“FIRST AMENDMENT”) is made as of this ____ day of December 2021 (the “Effective Date”), by and between **THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**, an instrumentality of the State of New Jersey (“LANDLORD”), and **MIR SCIENTIFIC LLC**, a Delaware limited liability company (“TENANT”).

WHEREAS, LANDLORD and TENANT are parties to that certain Lease dated June 16, 2021 (the “LEASE”), pursuant to which TENANT leases from LANDLORD approximately 14,662 square feet of space (the “LEASED PREMISES”) in LANDLORD’s building located at 685 South U.S. Route 1, North Brunswick, New Jersey as more particularly described in the LEASE.

WHEREAS, TENANT has used commercially reasonable efforts to secure CLIA certification and approval for the LEASED PREMISES as required pursuant to Section 41 of the LEASE.

WHEREAS, despite such efforts, TENANT has not yet secured CLIA certification and approval from the New Jersey Department of Health; and

WHEREAS, the parties wish to extend the date of such CLIA certification and approval as well as the TENANT termination option and restoration work, if applicable as set forth in the LEASE.

WHEREAS, LANDLORD and TENANT desire to amend the terms of the LEASE, upon the terms and conditions set forth herein.

NOW, THEREFORE, for the sum of \$1.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

1. Recitals. Each and every of the foregoing recitals are hereby incorporated herein at length and verbatim.
2. Defined Terms. Any capitalized terms used in this FIRST AMENDMENT shall, unless otherwise specifically provided for herein, have the same meanings as those terms are defined in the LEASE.
3. CLIA Date Extension. Section 41 of the LEASE is hereby amended as follows:
 - a. Section 41.1-Delete the CLIA Date of certification of “December 1, 2021” and insert “March 1, 2022” in its place;
 - b. Section 41.2 Delete the TERMINATION OPTION date of “December 1, 2021” and insert “March 1, 2022 in its place;”
 - c. Section 41.2- Delete the EARLY TERMINATION DATE of

“January 31, 2022” and insert “April 30, 2022” in its place;

d. Section 41.3-Delete the LANDLORD’s written report outlining the EARLY TERMINATION WEAR AND TEAR WORK due date of “December 10, 2021” and insert “March 10, 2022” in its place;” and

e. Section 41.3-Delete the date of “January 21, 2022” by which TENANT is to perform the EARLY TERMINATION WEAR AND TEAR WORK and insert “April 20, 2022” in its place

4. Entire Agreement. This FIRST AMENDMENT and the LEASE contain the entire understanding between the parties with respect to the matters contained herein. No representations, warranties, covenants or agreement have been made concerning or affecting the subject matter of this FIRST AMENDMENT, except as expressly contained herein.

5. Ratification. Except as modified by this FIRST AMENDMENT, all of the covenants, agreements, terms, provisions, conditions of the LEASE shall remain in full force and effect and hereby are ratified and affirmed.

6. Binding Effect. All of the covenants, agreements, terms, definitions, provisions and conditions contained in this FIRST AMENDMENT shall bind and inure to the benefit of the parties hereto and their respective successors and assigns. Capitalized terms used in the within FIRST AMENDMENT but not otherwise defined herein shall have the meanings ascribed to them in the LEASE.

7. Conflict. In the event of any conflict between the terms contained in this FIRST AMENDMENT and the LEASE, the terms herein contained in this FIRST AMENDMENT shall supersede and control the obligations and liabilities of the parties.

8. Governing Law. This FIRST AMENDMENT shall be governed and construed in accordance with the laws of the State of New Jersey.

9. Severability. A determination that any provision of this FIRST AMENDMENT is void, unenforceable or invalid shall not affect the enforceability or validity of any other provision of this FIRST AMENDMENT or the LEASE, and any determination that the application of any provision of this FIRST AMENDMENT to any person or to particular circumstances is illegal or unenforceable shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances.

10. No Presumption. This FIRST AMENDMENT shall be construed without regard to any presumption or other rule requiring construction against the party causing this FIRST AMENDMENT to be drafted or prepared.

11. Electronic Signatures. Pursuant to written policy, LANDLORD allows documents to be signed electronically and hereby agrees to be bound by such electronic signatures. TENANT also agrees to be bound by electronic signatures as a signatory to this LEASE.

12. Counterparts. This FIRST AMENDMENT may be executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one in the same instrument. Facsimile or PDF signatures to this LEASE shall have the same force and effect as “ink” signatures and no “ink” copy of any facsimile or PDF signature is required to bind the party signing by facsimile or PDF to this LEASE.

[Signatures on next page]

IN WITNESS WHEREOF, the parties have caused this FIRST AMENDMENT to be duly executed as of the day first written above.

WITNESS:

LANDLORD:

**THE NEW JERSEY ECONOMIC
DEVELOPMENT AUTHORITY**, an
instrumentality of the State of New Jersey

By: _____
Name: Brian Sabina
Title: Chief Economic Growth Officer

TENANT:

WITNESS:

MIR SCIENTIFIC LLC, a Delaware limited
liability company

By: _____
Name: Sam Salman
Title: Chairman & CEO



TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: December 8, 2021

SUBJECT: Recommendation for Award - # 2021-RFP-078-REBID
Title Services – As Needed Basis

Summary

The Members' approval is being requested to enter into a contract with Stewart Title Company, Parsippany, New Jersey for a three (3) year contract, with two (2), one (1) year extension options for a total cost up to \$500,000, to provide title services on an as needed basis to the Authority. These services will assist the Authority in evaluating potential real estate projects and loans as well as completing feasibility and due diligence studies. The services will also provide closing and disbursement services for property acquisitions and expedited updates on any currently held real estate or loan projects.

Background

On April 16, 2021 the Authority, at the request of the Real Estate Division, through its Internal Process Management ("IPM") Division, issued a solicitation for a Request for Proposals (RFP), #2021-RFP-078, to provide Title Services On An As Needed Basis.

There were no responsive bidders to the original solicitation and on July 9, 2021 a Request for Proposals Rebid, #2021-RFP-078 REBID was published. Two (2) firms responded to the Rebid.

These services will assist the Authority's Real Estate Division as well as other Authority staff in analyzing real estate property information on project investments to be made by the Authority. Services under these contracts also include conducting closing and issuance of title insurance policies when necessary. As specified in the RFQ/P, other departments in the Authority may also have a need to use these services for various types of title and/or record searches.

Per the instructions set forth in the RFP, firms submitting proposals were required to be licensed title companies, in the State of New Jersey with an "A" rating or better by a Fannie Mae-approved credit rating service for all Title Services/Insurance/closing requirements. It was also mandatory that firms be affiliated with at least one title insurance underwriter authorized to write title in the State of New Jersey, as well as provide proof that title producers on staff had an appropriate NJ State license in good standing.

In terms of evaluative criteria, a weighted average of three (3) primary categories were completed:

1. the qualifications and experience of the firm's management, supervisory and key personnel assigned to the contract, including candidates recommended for each of the positions/roles required;
2. documented experience in successfully completing contracts of a similar size and scope in relation to the work required by the RFP, based, in part, on the firm's submitted narratives and references; and
3. ability of firm to complete the Scope of Work based on firm's technical proposal.

Fee schedules were not provided to the Evaluation Committee but were ranked by IPM's Senior Procurement Officer and included in the overall evaluative criteria.

Firms were asked to complete the following technical proposal:

- a. description & documentation of proposer's prior experience and qualifications;
- b. management overview and technical approach to achieve the scope of work;
- c. organization chart, if applicable and not a sole proprietor;
- d. key team member list, if applicable and not a sole proprietor;
- e. resumes of key team members;
- f. references (minimum of three references are required); and
- g. financial capability of the proposer.

Proposals were received from:

- CW Solutions, Inc. dba CW Solutions, whose underwriter is Old Republic National Title Insurance Company;
- Stewart Title Company, whose underwriter is Stewart Title Guaranty Company.

IPM's Senior Procurement Officer reviewed the proposals for responsiveness. One proposal, CW Solutions, Inc., was deemed non-responsive, specifically their proposal was rejected for altering the fee schedule and not submitting the Fee Schedule accompanying the rebid RFP. The proposal submitted by Stewart Title Company was deemed responsive.

IPM requested a cost clarification/reduction from the remaining firm in accordance with the Best and Final Offer (BAFO) language provided in the RFP. However, the response from the bidder did not change or further reduce any of the pricing from the original fee schedule.

All proposals and supporting documentation, including IPM's Recommendation Memo, are on file with the IPM Division.

The requesting department will issue a Task Order Request ("TOR"), each time a title service is required by the Authority, detailing the specific project requirements. The Authority does not guarantee a minimum number of TORs during the term of the contract or any extensions thereafter. Rather, the Authority will utilize the Title Services of the successful vendor on an "as needed" basis, to assist and support its staff. A TOR will be issued for each project detailing that

project's requirements. The vendor will then provide the department with a cost based on the line item fees submitted on the Proposer's Fee Schedule. Prior to any work being performed, the Authority will provide written authorization to proceed via email to the vendor in response to the fees and costs outlined in its TOR.

Recommendation

Based on the results of the 2021 RFP, it is recommended that the Members approve entry into the Title Services on An As-Needed Basis contract with Stewart Title Company for a maximum of \$500,000 for three (3) years, with two (2), one (1) year extension options.

A handwritten signature in blue ink, appearing to read 'T. Sullivan', is positioned above a horizontal line.

Tim Sullivan, CEO

Prepared by: Bonny Serratelli



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: December 8, 2021

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

The following projects were approved under Delegated Authority in November 2021:

Premier Lender Program:

- 1) Green Vision Inc. (PROD-00276658) is located in Lafayette Township, Sussex County. The Company was formed in 2010 as a non-profit organization that provides programs to teach adolescent students and adults with Autism how to properly dismantle and recycle unwanted electronics. Investors Bank approved a \$2,070,000 bank loan contingent upon a 33.33% (\$690,000) Authority participation. Proceeds will be used to purchase commercial property for business expansion. The Company currently has eight employees and plans to create twelve full-time positions over the next two years.
- 2) Red Haven LLC (“Ren”) (PROD-00298545), is located in Millstone Township, Monmouth County. Ren was founded in 2021 as a real estate holding company formed to purchase the project property. The operating company, KCH Corporation (“KCH”), is related to Ren by common ownership. KCH was established in 1999 as a designer, importer and wholesaler of high-end disposable goods, utensils, dishes, medical supplies, toys, baby disposable products, and candles. Sterling National Bank approved a \$13,800,000 bank loan contingent upon a 14.49% (\$2,000,000) Authority participation. Proceeds will be used to purchase commercial property and land for business expansion. Currently, the Company has seventeen employees in New York and plans to create forty full-time positions within the next two years at the New Jersey site.

A handwritten signature in blue ink, appearing to read "T. Sullivan", is positioned above a horizontal line.

Tim Sullivan, CEO

**MEMORANDUM
EXECUTIVE SESSION
FOR INFORMATION ONLY**

To: Members of the Authority

From: Tim Sullivan
Chief Executive Officer

Date: December 8, 2021

Subject: Chromocell Corporation
New Jersey Bioscience Center

As part of our mission, the Authority leases lab space to startups and early growth stage companies at the New Jersey Bioscience Center. Staff's challenge is to provide support to these non-credit companies while minimizing risk to the Authority's balance sheet.

Chromocell Corporation is a graduate of the Incubator that moved to the Tech 4 building and subsequently downsized to the former Hurel space in Tech 3 earlier this year so it could continue operations while working to reorganize. The company is working to bring in new investors rather than liquidating the company, and the value of its assets is tied to its ability to maintain operations. While Chromocell is current on rent for the Tech 3 space, this tenant owes the Authority approximately \$594,480 in back rent, additional rent, utilities and PILOT charges relating to Tech 4, excluding late fees. Staff has worked out a tentative solution that entails Chromocell's relocation to a 1,300 sf lab in the Incubator for a one-year term commencing as of January 1, 2022. In return for allowing it to remain in occupancy at the Bioscience Center, Chromocell will repay all past due rent over the next 13 months.

We believe this move is in the Authority's interest because it will accomplish three objectives. Specifically, it will:

- reduce Chromocell's monthly occupancy costs, allowing it to pay down its rent arrearage;
- provide Chromocell additional time to secure funding from new investors; and
- free up Chromocell's current 5,000 sf lab and office suite in Tech 3 for Oyster Point, a Step-Out Lab tenant that is ready to graduate to larger space

The Incubator lab that Chromocell will occupy is currently vacant and reserved for Rutgers University's potential use in connection with their pending Build Back Better grant application, so Chromocell's short-term occupancy of the lab will not supplant another use.

As part of its lease for the Incubator lab, Chromocell will agree to make additional payments totaling \$594,480, satisfying its past-due rent obligations in addition to the monthly Incubator rent of \$4,057.00. Provided the company meets all rent obligations for the Incubator space and pays the \$594,480 in arrearages over the 12-month lease, staff is proposing to waive the \$221,344 in accumulated late charges at the end of the lease term.

Please note that staff does not currently have delegated authority to waive these charges. We intend to present amendments to delegated authority at an upcoming Board meeting that would allow the Chief Executive Officer to either waive the late fees due under Chromocell's lease or, in the alternative, compromise or settle the Authority's claim to the fees. Should delegated authority thresholds remain as currently set, staff will request formal action to waive or compromise the late charges at a future meeting.



Tim Sullivan, CEO

Prepared by: David E. Nuse
Attachment: Rent & Repayment Schedule

| Period | Incubator Lab Rent | Rent, Additional Rent and PILOT in Arrears | Additional Rent Late Charge in Arrears | Possible Credit for Additional Rent Late Charge | Total |
|---|-----------------------|--|---|--|---------------------|
| Lease Execution | \$0.00 | \$29,724.02 | \$0.00 | \$0.00 | \$29,724.02 |
| Month 1 | \$4,057.00 | \$25,000.00 | \$0.00 | \$0.00 | \$29,057.00 |
| Month 2 | \$4,057.00 | \$25,000.00 | \$0.00 | \$0.00 | \$29,057.00 |
| Month 3 | \$4,057.00 | \$25,000.00 | \$0.00 | \$0.00 | \$29,057.00 |
| Month 4 | \$4,057.00 | \$25,000.00 | \$0.00 | \$0.00 | \$29,057.00 |
| Month 5 | \$4,057.00 | \$25,000.00 | \$0.00 | \$0.00 | \$29,057.00 |
| Month 6 | \$4,057.00 | \$65,000.00 | \$0.00 | \$0.00 | \$69,057.00 |
| Month 7 | \$4,057.00 | \$65,000.00 | \$0.00 | \$0.00 | \$69,057.00 |
| Month 8 | \$4,057.00 | \$65,000.00 | \$0.00 | \$0.00 | \$69,057.00 |
| Month 9 | \$4,057.00 | \$65,000.00 | \$0.00 | \$0.00 | \$69,057.00 |
| Month 10 | \$4,057.00 | \$65,000.00 | \$0.00 | \$0.00 | \$69,057.00 |
| Month 11 | \$4,057.00 | \$65,000.00 | \$0.00 | \$0.00 | \$69,057.00 |
| Month 12 | \$4,057.00 | \$49,756.38 | \$221,344.12 | (\$221,344.12) | \$53,813.38 |
| Totals | \$48,684.00 | \$594,480.40 | \$221,344.12 | (\$221,344.12) | \$643,164.40 |
| Arrears - Rent, Additional Rent & PILOT | | | | | \$594,480.40 |
| Arrears - Additional Rent Late Charge | | | | | \$221,344.12 |
| Total | | | | | \$815,824.52 |



EXECUTIVE SESSION

TO: Members of the Authority

FROM: Tim Sullivan

DATE: December 8, 2021

SUBJECT: New Jersey Wind Port – Request to Approve Easement and License Agreements with PSEG Nuclear & Request for Delegated Authority to Enter Into a Use Agreement with PSEG Power & Request for Funds Reallocation

REQUEST

The Members of the Board are asked to approve:

1. The Authority entering into a road access easement agreement with PSEG Nuclear;
2. The Authority entering into a temporary construction area license agreement with PSEG Nuclear for the New Jersey Wind Port (NJWP);
3. A request for delegated authority for the Chief Executive to enter into a license agreement with PSEG Power enabling the Authority's use of an approximately 100-acre property ("Parcel B") adjacent to the Authority's leased premises while parties finalize the terms of a sale agreement for the property. License execution will be contingent on an acceptable level of environmental risk;
4. A request to reallocate up to \$10 million from the \$123 million in approved Phase 1 construction funding to allow Parcel B works to be undertaken by PSEG on the Authority's behalf, and to extend the termination date of the existing Letter of Intent (LOI) between the Authority and PSEG to 7/1/22 from 12/31/21 currently. This will provide a contingency should the exchange of Parcel B from the United States Army Corps of Engineers (USACE) to PSEG not complete in time for construction start on that parcel; and
5. A budget of up to \$1 million to reimburse PSEG's reasonable costs in reviewing and approving works that the Authority undertakes on licensed areas. Reimbursement will be governed on a purchase order and invoicing basis in accordance with license terms.

SUMMARY

The road access easement agreement provides the Authority with shared access rights to four PSEG Nuclear-owned roads connecting the Authority's leased premises to the main site entrance (see [Exhibit A](#)). It places certain obligations on the Authority, including the need to preserve free-flowing access and to reimburse PSEG Nuclear for proportional road maintenance costs. The easement agreement will take effect immediately upon the drawdown of Parcels A and G1.

The temporary construction area license agreement grants the Authority non-exclusive use of five parcels totaling approximately 28 acres, as well as four adjacent temporary access roads, to support the Port's construction (see [Exhibit B](#)). The license agreement sets out the terms of shared use and commits the Authority to reimburse PSEG Nuclear's reasonable costs in reviewing (through the lens of nuclear safety) any works the Authority, or its agents, perform in/upon the licensed areas. The agreement will take effect upon 30 days' written notice to PSEG Nuclear and will terminate upon the earlier of 120 days' notice by either party or December 31, 2027. The license agreement levies a fee on the Authority of \$2,000 per acre per annum (2021 dollars) equating to approximately \$57,000 per annum and \$350,000 over the agreement's life, assuming a termination date of December 31, 2027. The per acre rate was negotiated between the parties and represents approximately 60 percent of the per acre Base Rent under the Ground Lease. Easement (including license) costs were accounted for in the August 2021 Board approval of the Lease.

Members are also asked to approve the Chief Executive, on behalf of the Authority, entering into a license agreement – on the business terms enclosed in [Exhibit E](#) – with NDEV LLC, a subsidiary of PSEG Power, for the use of an approximately 100-acre property. The property is currently a Confined Disposal Facility (CDF) owned by the United States Army Corps of Engineers (USACE) and subject of an exchange between the USACE and PSEG.¹ Use of the property, which is contiguous to the Authority's leased premises, is critical to the construction of Phase 1 of the Port. It is also the intended location of Phase 2 of the Port's development (known as "Parcel B" in the Authority's overall development concept plan).

The license agreement enables the Authority to use the property to support Port construction until the earlier of the Authority purchasing the property from PSEG for \$24.25 million – which has been extensively negotiated between parties – or December 31, 2022. The Authority intends to purchase the property as soon as practicable and will return to the Board in the first quarter of 2022 to seek approval of a sale agreement; but has an immediate need to use the property to support the Port's Phase 1 construction. To this end, the license commits parties to "negotiate in good faith towards a sale and transfer of title to the Authority during the first quarter of 2022", on the same terms that PSEG acquires the land from the USACE, to the extent permitted under state law.

In the event the Authority's activities on the property determine the presence of Hazardous Materials requiring investigation and/or remediation in accordance with Environmental Laws, the Authority shall be responsible for conducting such investigation and/or remediation at its sole expense; with the exception of those materials that resulted from any act or omission by PSEG prior to and/or during the license term. This means that should contaminants be discovered that could (under Environmental Law) be left in place with a cap, the Authority will have the choice at

¹ The exchange of the property from the USACE to PSEG is expected to complete by 12/31/21.

that time – based on an assessment of cost and benefit, including an assessment of the risk of finding further contamination – of whether to continue use or discontinue use and cap the parcel.² Should contaminants, once discovered, legally require extraction, cleaning and removal (i.e active remediation) the Authority would not have the choice to actively remediate. In order to size this non-negotiable liability Staff have tasked technical advisors, WSP USA, with quantifying the potential risk (probability and consequence) based on what is currently known about the property. This information includes a February 2021 Phase 1 Environmental Assessment and Preliminary Assessment Report undertaken by AKRF, on behalf of PSEG Power, and shared with the Authority.³ The Phase 1 assessment noted the presence of historic fill material, and proximity to the Hope Creek and Salem nuclear plants, which it considered potential Areas of Concern (AOCs), Recognized Environmental Concerns (RECs) and/or Vapor Encroachment Conditions (VECs).⁴ The Authority has a letter of reliance from AKRF for this report.

Should WSP’s findings show a realistic worst case-scenario cost to the Authority of greater than \$60 million, the Authority will not enter into the license agreement, and will return to the Board with an alternative arrangement for securing the property to support the Port’s construction. This liability is sized on the basis of the estimated savings to the Authority of securing property rights, which are estimated at up to \$60 million assuming a placement need of 1.2 million cubic yards (CY) of dredge and a placement cost of \$50 per CY should an alternate CDF be required.⁵

Should findings be within the stated liability limit and the Authority enter into the license, but a sale not proceed due to PSEG breaching its commitment to sell or failing to negotiate “in good faith”, the Authority will be fully reimbursed by PSEG for the remediation costs it incurs during the license period. Reimbursement would not apply should the Authority choose not to proceed to a sale; however its remediation obligation would cease upon the termination of the license other than where such environmental condition could be established by a preponderance of the evidence standard as having been caused by the Authority’s activities during the license term.

This Memorandum also updates the Board on several other conditions precedent (CPs) to the drawdown of parcels A and G1, which is targeted to occur in January 2022 in order to enable contractor mobilization ahead of core construction commencement.

² The proposed future development of Parcel B into a port is expected to serve as a cap, meaning the Authority is not incurring additional cost by discontinuing its use of the parcel rather it is bringing this cost forward.

³ Phase 1 assessments were also undertaken in 2015 by the USACE and in 2018 by AKRF on behalf of PSEG Power.

⁴ The proximity of the Hope Creek and Salem plants to the property was considered by the report to be an “off-site impact”.

⁵ The higher cost for alternative site dredge placement reflects the need for mechanical dredging, versus hydraulic dredging in the case of Parcel B given its proximity to the proposed dredge channel, as well as commercial dredge placement prices. Commercial prices have been informed by the Authority’s technical advisors, WSP USA.

DETAIL

On August 11, 2021, the Board approved the Authority entering into a 78-year Ground Lease with PSEG Nuclear for approximately 122 acres of property to enable the construction and operation of the New Jersey Wind Port (NJWP). The Lease was executed by the parties on September 14, 2021. While requisite access easements are identified in the Lease, the Lease provided for the terms governing the easements, as well as the temporary construction areas, to be finalized after Lease execution. This enabled the Authority to have the Lease in place sooner in order to commence due diligence activities. More specifically, the Lease commits the parties to executing easement agreements covering permanent road access, temporary road access and temporary construction area use prior to the drawdown of parcels (i.e property becoming leased premises). Staff intend to draw down parcels A and G1 in January 2022.

1 Road access easement Agreement

The full agreement is included at Exhibit C.

Shared access

The leased premises are located some distance from the main entry point to PSEG Nuclear's property necessitating shared use of its road network. Besides PSEG Nuclear and its contractors, the Authority anticipates sharing use of the roads with the USACE, the Delaware Department of Natural Resources and Environmental Control (DNREC) and LS Power, which owns and operates a transmission line adjacent to the Authority's leased premises. The Agreement commits the parties to preserving free flowing access and commits PSEG Nuclear to providing a reasonable alternate means of ingress or egress "if it is anticipated that any Grantee Party⁶ will be prevented from accessing any of the Shared Easement Areas for any reason."

Cost obligations

The Authority's cost obligations under the Agreement comprise:

- Proportional road maintenance costs; and
- Reimbursement of costs that PSEG Nuclear incurs in replacing a section of shared road.

Except with respect to easements 5 and 6 which the Authority proposes to regrade, PSEG Nuclear will be responsible for maintaining all access roads, with parties agreeing that normal and routine maintenance expenses shall be paid in proportion to each parties' usage. The Agreement commits the parties to agree to a calculation and schedule for annual apportionment and payment of maintenance expenses. In the event that additional or extraordinary maintenance expenses are incurred, the party necessitating such expenses shall be responsible for payment thereof.

⁶ Comprises the Authority/grantee and its principals, officers, employees, lessees, sublessees, contractors, subcontractors, agents, representatives, guests or invitees.

The Authority anticipates that its share of overall road maintenance costs will be small in the initial years of the Lease and will scale in-line with Port operations. Staff included these costs in the additional rent estimate attached to the Ground Lease Board approval.⁷

The Authority will also be obligated to reimburse PSEG Nuclear for costs it incurs in replacing a section of the existing Material Center Road (Easement 7). This section currently intersects with Parcel G1 and will be subsumed into those premises when Parcel G1 is drawn down. The Lease grants PSEG Nuclear continued access to the road until such time as PSEG constructs a replacement road. The Agreement commits PSEG Nuclear to construct a replacement section on or before October 14, 2022 (Parcel G1 construction commencement) and provides the Authority with access to that new section upon its completion. Consistent with other facility relocations, the Authority shall review and approve plans and specifications prior to work commencing and, working with its technical advisors, WSP USA, will ensure functional equivalency.

Right to re-grade

The Agreement grants the Authority the right to re-grade two existing roads (Easements 5 and 6). While unpaved roads currently exist, the Port will require that the roads be re-graded to better support vehicular traffic and elevated to align with the proposed elevation of the wharf and uplands. The Agreement also obligates the Authority to maintain these roads.

Use restrictions

Because of the proximity of the leased premises to the Hope Creek and Salem nuclear generating stations, the Authority's use of easements must comply with PSEG Nuclear's safety provisions, procedures and policies; such as restrictions on the types and volumes of fuels and chemicals being transported. However, the Agreement commits that except for any such restrictions, PSEG Nuclear shall not refuse any Grantee Party access and egress from the Easement Areas; provided, however, that in the event of a catastrophic incident or other imminent threat to human safety, access may be restricted for such time as may reasonably be necessary to remedy such danger. In addition, the Agreement stipulates certain use restrictions relating to overhead or underground powerlines.

Environmental obligations

The Easement Agreement states that any use, discharge, storage, and/or disposal of Hazardous Materials in the Easement Areas, which is the result of any act or omission by either Grantor or Grantee, shall be the sole responsibility of the party causing such environmental condition, including all monetary expenses and/or fines levied by any governmental entity. The Agreement further states that the Party causing such environmental condition shall also be solely responsible for undertaking such corrective measures as is necessary to remediate any environmental condition caused by that Party, as well as restoring any property affected by the environmental condition to the same or as good as condition as existed prior to such environmental condition.

Utility easements

⁷ PSEG Nuclear estimates road maintenance costs for its entire property at approximately \$200,000 per annum.

The parties will need to negotiate and execute easement agreements governing power transmission and water and sewer infrastructure. Until preliminary designs are developed, the requisite easements for these utilities have still to be identified. Staff will return to the Board once requisite easements are identified and the terms are finalized.

2 License agreement

The License Agreement covers five parcels totaling approximately 28 acres, as well as four access roads that will be used to support the Port's construction; as illustrated in Exhibit B. The Authority's key obligations under the license agreement are outlined below. Staff will ensure that all parties engaged by the Authority to perform work on the temporary areas, including but not limited to its construction manager and its subcontractors, are provided with a copy of the license agreement – and will ensure that all parties are contractually required to abide by its obligations. The full agreement is included at Exhibit D.

Shared use

The License Agreement grants the Authority non-exclusive use of the temporary construction areas and access roads. For Area 1 (Barge Berth Area) and Area 3 (Storage Area), the Authority is also obligated to move any equipment or materials necessary for use of those areas by PSEG Nuclear upon seventy-two (72) hours' prior written notice unless, utilizing commercially reasonable efforts, unless such equipment and materials cannot be moved within such time, in which event the Authority shall be provided the additional time required to move, not to exceed seven (7) days. The shared use provision governing Areas 1 and 3 reflects the importance of these two areas to PSEG Nuclear's operations.

Termination rights

Either party may terminate one or more license areas prior to December 31, 2027 upon 120 days' prior written notice to the other Party; provided, however, that PSEG Nuclear may only terminate Area 13 upon 180 days' prior written notice to the Authority. These terms balance the need for PSEG Nuclear to preserve flexibility in the use of its property, given the proximity of the temporary areas to the Hope Creek and Salem nuclear generating facilities, with the need to minimize uncertainty for the Authority and its contractors.

Staff consulted with the Authority's construction manager regarding this provision and, as a result, believes that any impacts to the project would be manageable should PSEG Nuclear terminate one or more license areas. Any impacts to the temporary construction areas will be proactively managed by ensuring that the construction manager communicates the termination risks to the subcontractors, and that the constructability plans take this risk into account.

The Agreement allows for an extension beyond December 31, 2027 with both parties' agreement.

Cost obligations

The Authority's cost obligations under the Agreement comprise:

- A per acre license fee;
- Reimbursement of PSEG Nuclear's costs in reviewing works on licensed areas;
- Maintenance of licensed areas; and
- Restoration of licensed areas upon termination.

The Agreement levies a fee on the Authority of \$2,000 per acre per annum (2021 dollars) equating to approximately \$57,000 per annum and \$350,000 over the life of the agreement, assuming a termination date of December 31, 2027. The per acre rate was negotiated between the parties and represents approximately 60 percent of the per acre Base Rent under the Ground Lease.

The Agreement also obligates the Authority to reimburse PSEG Nuclear for "the reasonable costs and expenses of personnel, inspectors, labor, materials, equipment, and any other costs and expenses incurred in connection with any review of plans, documents or field inspection and supervision" of work undertaken on one of the licensed areas. PSEG Nuclear will be required to provide copies of invoices received from contractors as well as itemized internal costs and invoices for all other costs to be reimbursed. The Authority is also obligated to promptly repair and/or restore license areas to their condition immediately prior to use. This reflects the potential for the Authority to borrow soil and other materials from certain areas to support surcharging.

In-line with the process agreed to under the Letter of Intent (LOI) and the Lease, PSEG Nuclear will be required to provide the Authority with a Purchase Order (PO) for its review and approval prior to incurring any external costs in reviewing the Authority's work on any licensed areas.

Area-specific restrictions

Several of the temporary construction areas overlap with existing utility and other infrastructure, such as overhead and subsurface power lines. Specifically, the Authority's use of the licensed areas must comply with the requirements of the National Electrical Code and the National Electrical Safety Code, the Department of Transportation Minimum Federal Safety Standards promulgated under the authority of the Natural Gas Pipeline Safety Act of 1968, and the "Underground Facility Protection Act," as applicable to required clearances to any electric or gas facilities on the Property. Other than temporary trailers and equipment, no buildings or structures shall be erected within any of the licensed areas.

Further, prior to the use of Area 1 for activities or uses involving large loads, the Authority is required to assess the barge's condition and determine its maximum weight bearing capacity. Based on this assessment, parties will agree on weight restrictions for the Authority's barge use. The Authority's technical advisor has recommended that this assessment be undertaken for safety purposes in any event, given a lack of available information on the barge area's current condition. The Authority will be tasking its engineer-of-record, M&N, with undertaking this assessment.

Notification of damage and/or spills

The Authority is required to notify PSEG Nuclear of any property damage and environmental incidents in any temporary construction area within thirty (30) minutes after an occurrence and, if requested by PSEG Nuclear, shall provide a written report within twenty-four (24) hours detailing such incident. This is necessary for nuclear safety considerations. PSEG are also required to advise the Authority within seven (7) days (unless a shorter period of time is required by applicable law or to protect health, life or safety in which case such shorter period of notification shall be required) after the occurrence of any use, discharge, storage and/or disposal of Hazardous Materials in violation of Environmental Laws on the Property by Nuclear or any of its affiliates or licensees.

3 Delegated authority to enter into a license agreement for the use of Parcel B

Members are asked to approve the Chief Executive, on behalf of the Authority, entering into a license agreement – on the business terms enclosed in Exhibit E – with NDEV LLC, a subsidiary of PSEG Power, for the use of an approximately 100-acre property that is contiguous to the Authority’s leased premises, and that will be used to support the Port’s construction. The property is currently a CDF owned by the USACE and subject of an exchange between the USACE and PSEG. Use of the property is critical to the construction of Phase 1 of the Port. It is also the intended location of Phase 2 of the Port’s development (known as “Parcel B” in the Authority’s overall port development concept plan). A summary of the key terms that have been agreed with PSEG, and an assesment of their risk implications for the Authority, is included below.

Conditions precedent to the license taking effect

The commencement of the license shall be contingent on several conditions precedent, including:

- PSEG having fee title – recognizing that the property is currently owned by USACE;
- NJEDA having drawn down on Parcels A and G-1 under the Ground Lease with PSEG Nuclear – which is scheduled to occur in January 2022;
- PSEG providing NJEDA with a copy of land exchange documentation from the USACE – which will enable the Authority to assess the environmental risks that the USACE has retained versus transferred through its exchange with PSEG; and
- A letter of reliance from AKRF regarding its February 2021 Phase I Environmental Assessment and Preliminary Assessment Report (already met/received).

Commitment to negotiate in good faith towards a sale and transfer of title to the Authority

The license agreement terminates upon the earlier of the Authority purchasing the property for \$24.25 million or December 31, 2022. The Authority intends to purchase the property as soon as practicable and will return to the Board in the first quarter of 2022 to seek approval of a sale agreement; but has an immediate need to use the property to support the Port’s construction in advance of the sale completing. To this end, the license commits parties to negotiate in good faith towards a sale and transfer of title to the Authority during the first quarter of 2022, on the same terms that PSEG acquires the property from the USACE.

The sale price has been extensively negotiated between parties over the past year with the agreed price of \$24.25 million pegged to the (\$17 million in 2012 dollars) purchase price of the land that PSEG bought to exchange with the USACE, escalated at a rate (3 percent per annum) determined by an independent appraisal which took into account the change in industrial land values in southern New Jersey. The agreed price also reflects PSEG's transaction costs incurred through the exchange process. Staff believe the agreed price to be good value for the State particularly when considering the significant cost savings in having a proximate CDF for the placement of dredge. Placement at a commercial CDF is estimated to cost \$60 million based on 1.2 million CY which is the approximate volume of the first phase of dredging; with subsequent phases potentially increasing this placement volume depending on the viability of alternative beneficial reuse sites.

Environmental obligations

The Authority will be required to comply with all environmental laws that are or become applicable to its activities on the property and shall be liable for any use, discharge, storage, and/or disposal of Hazardous Materials which result from its activities during the license term.

Further, in the event the Authority's activities on the property determine the presence of Hazardous Materials requiring investigation and/or remediation in accordance with Environmental Laws, the Authority shall be responsible for conducting such investigation and/or remediation at its sole expense; with the exception of those materials that resulted from any act or omission by PSEG prior to and/or during the license term. This means that should contaminants be discovered that could (under Environmental Law) be left in place with a cap, the Authority will have the choice at that time – based on an assessment of cost and benefit, including an assessment of the risk of finding further contamination – of whether to continue use or discontinue use and cap the parcel. Should contaminants, once discovered, legally require extraction, cleaning and removal (i.e active remediation) the Authority would not have the choice to actively remediate.

In order to size this non-negotiable liability Staff have tasked technical advisors, WSP USA, with quantifying the potential risk (probability and consequence) based on what is currently known about the property. This information includes a February 2021 Phase 1 Environmental Assessment and Preliminary Assessment Report undertaken by AKRF, on behalf of PSEG Power, and shared with the Authority. The Phase 1 assessment noted the presence of historic fill material, and proximity to the Hope Creek and Salem nuclear plants, which it considered potential Areas of Concern (AOCs), Recognized Environmental Concerns (RECs) and/or Vapor Encroachment Conditions (VECs). The Authority has a letter of reliance from AKRF for this report.⁸

Should WSP's findings show a realistic worst case-scenario cost to the Authority of more than \$60 million, the Authority will not enter into the license agreement, and will return to the Board with an alternative arrangement for securing the property to support the Port's construction. This liability is sized on the basis of the savings to the Authority of having a proximate CDF, which are estimated at up to \$60 million assuming a placement need of 1.2 million CYs of dredge and placement cost of \$50 per CY should an alternate CDF be required; noting that actual dredge

⁸ Phase 1 assessments were also undertaken in 2015 by the USACE, and in 2018 by AKRF on behalf of PSEG Power.

placement volumes may be much higher depending on beneficial reuse opportunities.⁹

Should findings be within the stated limit and the Authority enter into the license, but a sale not proceed due to PSEG breaching its commitment to sell or failing to negotiate a sale “in good faith”, the Authority will be fully reimbursed by PSEG for the remediation costs it incurs during the license period. Reimbursement would not apply should the Authority choose not to proceed to a sale; however its remediation obligation would cease upon the termination of the license other than where such environmental condition could be established by a preponderance of the evidence standard as having been caused by the Authority’s activities during the license term.

Obligation to restore the property to the same or better condition

If termination of the license occurs without a transfer of title (i.e., sale doesn’t complete by 12/31/2022 and parties do not agree to extend), the Authority shall be responsible, at its sole cost and expense, for restoring the Parcel to the same or better condition as compared to its condition at license commencement; provided that such obligation is subject to the following conditions:

- The Parties’ failure to enter into the Sale Agreement by 12/31/2022 has not been caused by PSEG’s breach of its commitment to sell the Parcel as set forth above or failure to negotiate the Sale Agreement in good faith; and
- NJEDA shall be provided the time reasonably required, but in no event greater than six (6) months, to have the Parcel restored to the necessary condition.

Permitted uses

The license permits the Authority and its principals, officers, employees, lessees, sublessees, contractors, subcontractors, agents, representatives, guests or invitees (“NJEDA Parties” and, individually, a “NJEDA Party”) the right to enter onto the property for purposes that includes the removal of up to 900,000 CY of material for the purposes of site elevation and surcharge on the leased premises. Additionally, it permits the construction of CDF improvements necessary to accommodate a future dredge placement volume of up to 2 million CYs, including but not limited to: dikes; berms; spillway; and associated dewatering improvements.

Prior to undertaking of works on the Parcel, PSEG shall be provided with such documentation for its review as PSEG reasonably requires in order to confirm that improvements and/or materials removal will be in compliance with applicable law, which review shall be at the Authority’s cost.

Cost reimbursement

The Authority’s license obligations include reimbursement of PSEG’s costs in reviewing and approving the Authority’s work on the licensed areas, as well as undertaking environmental testing should the Authority request it – such testing being undertaken by PSEG on the Authority’s behalf.

⁹ The higher cost for alternative site dredge placement reflects the need for mechanical dredging, versus hydraulic dredging in the case of Parcel B given its proximity to the proposed dredge channel, as well as commercial dredge placement prices. Commercial prices have been informed by the Authority’s technical advisors, WSP USA.

In-line with the process agreed to under the LOI and Lease, PSEG will be required to provide the Authority with a PO for its review and approval prior to incurring any external costs in reviewing the Authority's work on the property - and to furnish copies of invoices received from contractors, itemized internal costs and invoices for other related fees and costs to be reimbursed.

4 Reallocation of construction funds and extension of Letter of Intent (LOI)

The Authority's LOI with PSEG Nuclear is due to expire on 12/31/21 which is timed to coincide with the completion of early site works, such as subsurface concrete removal, which PSEG has been undertaking on the Authority's behalf. The exchange of Parcel B from the USACE to PSEG is expected to complete by 12/31/21, in time for works on Parcel B to commence in early 2022. In order to provide a contingency should the exchange be delayed, Staff are seeking to extend the LOI termination date to 7/1/22 in order to allow for Parcel B works to commence under the LOI. This would extend to critical path works only, including the borrowing of material and construction of CDF improvements. The Authority's construction manager and engineer-of-record have confirmed that interface between PSEG's contractors on Parcel B and the Authority's contractors on the leased premises would be manageable. This would allow Parcel B works to commence on schedule until such time the exchange completes and the use agreement takes effect, or the Authority purchases the parcel from PSEG.

Staff are seeking to reallocate up to \$10 million in approved construction funds to the LOI to cover these costs. All costs would be governed in accordance with the LOI's terms, which include upfront approval by the Authority of purchase orders and itemized invoicing.

5 Other conditions precedent to parcel drawdown – update

This Memorandum also serves to update the Board on recent developments concerning several other conditions precedent (CPs) to the drawdown of parcels A and G1, which is targeted to occur in January 2022 to enable contractor mobilization ahead of core construction commencement.

LS Power easement agreement

LS Power, a power development, investment and operating company, owns a 230 kV transmission line that runs adjacent to parcels A, C, G1 and G3. Besides the easement immediately under and around its power lines, LS Power has two ongoing construction-related easements that overlap the Authority's leased premises and proposed location of the berths, which may be used on a short-term basis for line repair and replacement. The Lease requires that the LS Power easement issue be resolved to the Authority's satisfaction; with resolution included as a CP to parcel drawdown.

Staff can confirm that the LS Power easement agreement was amended on October 21, 2021 to the Authority's satisfaction. With input from the Authority's engineer-of-record, M&N, and technical advisor, WSP USA, LS Power's construction-related easements have been resized; with the amended agreement provided to the Authority. While there remains overlap between the LS Power's construction-related easement areas and the Authority's leased premises, the overlap is minimal and no longer includes areas on which berth improvements will be constructed. PSEG

Nuclear and LS Power are presently finalizing – with the Authority’s input – a consent agreement which will codify the activities that can be undertaken in LS Power’s remaining easements areas.

Insurance

The Lease, as approved by the Board in August 2021, commits the Authority to maintain certain insurances (with minimum coverage amounts) during the Lease term; and to provide insurance certificates to the Landlord prior to parcel drawdown. These insurance requirements include:

- Commercial General Liability insurance;
- Workers’ Compensation insurance;
- Commercial Automobile Liability insurance;
- Pollution/Environmental Liability insurance; and
- Umbrella/Excess Liability insurance.

Further, prior to commencing work on the Leased Premises, the Authority is required by the Lease to hold Builders’ Risk insurance (when applicable to the work being performed).

Staff are currently working with the Authority’s insurance broker to competitively price and put in place requisite coverages in time for the drawdown of parcels A and G1, targeted for January 2022. In-line with the August 2021 Board approval, insurance costs, alongside rent and easement-related costs incurred prior to sub rents coming online will be borne by the Authority; with Staff anticipating reimbursement via a future bond issuance. The estimated size of this obligation through 2024, at \$7.4 million (nominal), remains unchanged from the time of the Board approval.

Dredge placement agreement

The Lease requires that the parties finalize an agreement, prior to the Authority drawing down parcels, granting the Authority the right to place dredge on Parcel B. The inclusion of a placement agreement as a CP aimed to de-risk dredge placement costs and to allow for a situation where dredge placement needs to occur prior to the sale completing.

The parties will not be able to negotiate a dredge placement agreement in time for parcel drawdown in January 2022. Not waiving this CP would delay drawdown and, in turn, risk construction completion by Quarter 1 2024, which, in-turn, will impact the ability to meet subtenant needs. Further, dredging is not scheduled to occur until July 2022, providing sufficient time to execute a sale. Should a sale not complete by July 2022, alternative dredge placement locations would be available; although this would result in an additional cost to the Project of approximately \$60 million. Staff believes this risk is low and that delaying construction until an agreement is finalized is not in the Authority’s best interests.

The August 2021 Board approval of the Lease provided the Chief Executive Officer with delegated authority to authorize parcel drawdown provided that the CPs stipulated in the Lease are satisfied “or are determined to no longer materially impact the development and operations of the NJWP”.

RECOMMENDATION:

The Members of the Board are asked to approve:

1. The Authority entering into a road access easement agreement with PSEG Nuclear;
2. The Authority entering into a temporary construction area license agreement with PSEG Nuclear for the New Jersey Wind Port (NJWP);
3. A request for delegated authority for the Chief Executive to enter into a license agreement with PSEG Power enabling the Authority's use of an approximately 100-acre property ("Parcel B") adjacent to the Authority's leased premises while parties finalize the terms of a sale agreement for the property. License execution will be contingent on an acceptable level of environmental risk;
4. A request to reallocate up to \$10 million from the \$123 million in approved Phase 1 construction funding to allow Parcel B works to be undertaken by PSEG on the Authority's behalf, and to extend the termination date of the existing Letter of Intent (LOI) between the Authority and PSEG to 7/1/22 from 12/31/21 currently. This will provide a contingency should the exchange of Parcel B from the United States Army Corps of Engineers (USACE) to PSEG not complete in time for construction start on that parcel; and
5. A budget of up to \$1 million to reimburse PSEG's reasonable costs in reviewing and approving works that the Authority undertakes on licensed areas. Reimbursement will be governed on a purchase order and invoicing basis in accordance with license terms.



Tim Sullivan, CEO

Exhibit A – Road access easements

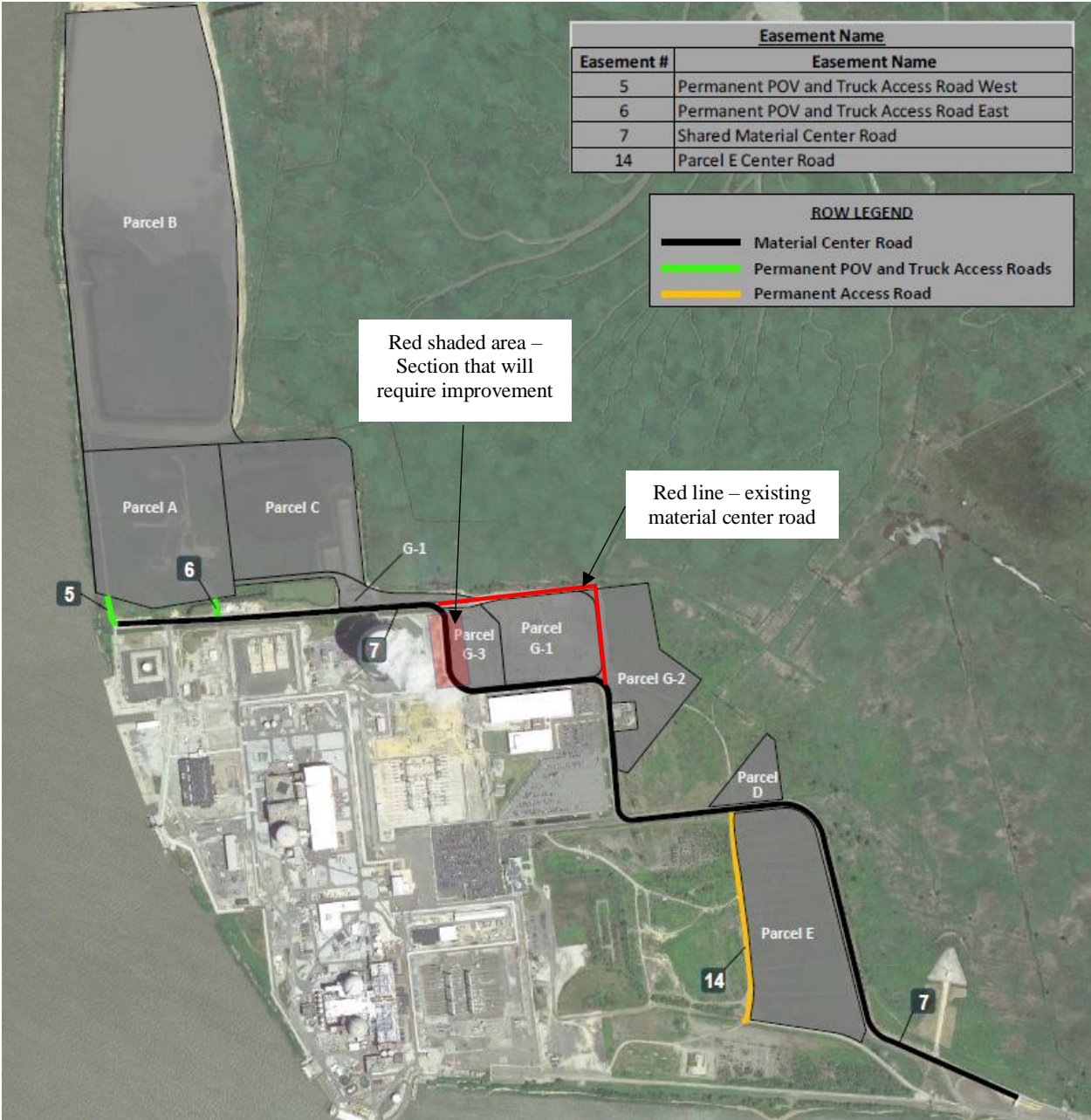


Exhibit B – Construction areas and road access granted under the license agreement



Exhibit C – Road access easement agreement

GRANT OF ROAD ACCESS EASEMENTS AND AGREEMENT

THIS GRANT OF ROAD ACCESS EASEMENTS AND AGREEMENT (this “**Grant Agreement**”) is made as of the ____ day of December, 2021 (the “Effective Date”), between **PSEG NUCLEAR LLC**, a Delaware limited liability company, having an address at 80 Park Plaza, Newark, New Jersey 07102 (“**Grantor**”) and **THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**, a body corporate and politic organized and existing under the laws of the State of New Jersey having its principal offices located at 36 West State Street, P.O. Box 990, Trenton, New Jersey 08625 (“**Grantee**”). Each of Grantee or Grantor may be referred to herein as a “Party”; and Grantee as a Party, together with Grantor as a Party, may be referred to herein as the “Parties”.

PRELIMINARY STATEMENT

A. Grantor is the owner in fee simple of those certain tracts of real property situated in the Township of Lower Alloways Creek, County of Salem, State of New Jersey, commonly known as Block 26, Lots 4 and 5 and as more particularly described in Exhibit A attached hereto and made a part hereof (together, the “**Grantor’s Property**”);

B. Grantor and Grantee have entered into a certain Ground Lease, dated September 14, 2021 (the “**Ground Lease**”), pursuant to which Grantor has agreed to lease to Grantee at various times and subject to various conditions parcels of the Grantor’s Property as set forth in the Ground Lease (the “**Leased Premises**”), subject to the terms and conditions set forth in the Ground Lease.

C. In order to provide for Grantee’s access to the Leased Premises, Grantor hereby wishes to convey to Grantee four (4) permanent roadway and access easements (vehicular and pedestrian) to Grantee specifically encumbering Grantor’s Property for the benefit of Leased Premises as more fully described herein to Grantee for its use, occupancy and enjoyment and the use, occupancy and enjoyment of its licensees, successors in interest and assigns, in connection with its conduct of business on the Leased Premises as permitted under the Ground Lease;

D. It is a condition of the Ground Lease that Grantor and Grantee enter into easements to provide access to and from the Leased Premises by means of common access roads and connector roads for the benefit of Grantee; and

E. Grantor does agree to convey easements to Grantee, upon the conditions, covenants, promises and terms set forth in this Grant Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the sum of ONE (\$1.00) DOLLAR, and other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, Grantor and Grantee hereby mutually covenant, promise and agree as follows:

1. **Easement Descriptions.** Grantor hereby grants and conveys to Grantee, its successors and assigns forever, subject only to the terms of this Grant Agreement, fully paid, irrevocable, road access easements, as indicated below, without advance notice required (collectively, the “**Road Access Easements**”) in, under, through, upon, over and across, as the case may be, the areas of Grantor’s Property shown and identified on the map entitled “NJ Wind Port Permanent Road Access Easements” (the “**Map**”), which is attached hereto as **Exhibit B** and made a part hereof (collectively, the “**Easement Areas**”), with full rights, privileges and authority for Grantee and its principals, officers, employees, lessees, sublessees, contractors, subcontractors, agents, representatives, guests or invitees (Grantee and each such party are sometimes collectively referred to herein as the “**Grantee Parties**” and, individually as a “**Grantee Party**”) to enter upon same from time to time, and to use the Easement Areas for the purpose set forth herein, such easement areas being specifically the following:

(a) **Easement 5.** Subject to any existing encumbrances of record, an easement in, under, through, upon, over and across Grantor’s Property in the areas shown and identified as “Permanent POV & Truck Access Road West Easement #5 on the Map, as more particularly described on the legal description set forth on **Exhibit C** attached hereto and made a part hereof (the “**POV & Truck Access Easement - 1 Area**”);

(b) **Easement 6.** Subject to any existing encumbrances of record, an easement in, under, through, upon, over and across Grantor’s Property in the areas shown and identified as “Permanent POV & Truck Access Road East Easement #6” on the Map, as more particularly described on the legal description set forth on **Exhibit D** attached hereto and made a part hereof (the “**POV & Truck Access Easement - 2 Area**” and, together with the POV & Truck Access Easement -1 Area, the “**POV & Truck Access Easement Areas**”);

(c) **Easement 7.** A shared easement in, through, upon, over and across Grantor’s Property in the areas shown and identified as “Shared Material Center Road” on the Map, as more particularly described on the legal description set forth on **Exhibit E** attached hereto and made a part hereof (the “**Shared Material Center Road Easement Area**”); and

(d) **Easement 14.** A shared easement in, through, upon, over and across Grantor’s Property in the areas shown and identified as “Parcel E Center Road” on the Map, as more particularly described on the legal description set forth on **Exhibit F** attached hereto and made a part hereof (the “**Shared Parcel E Center Road Easement Area**”). The Shared Material Center Road Easement Area and the Shared Parcel E Center Road Easement Area shall hereinafter be collectively referred to as the “**Shared Easement Areas.**”

2. **Easement Purpose.** The Road Access Easements shall be for the purpose of using, within the defined scope of the Easement Areas, non-public roads for pedestrian and vehicular ingress and egress including, without limitation, cars, vans, buses, trucks, trailers, and other vehicles and equipment (including construction, delivery, transportation, oversized, heavy-haul and other vehicles and equipment), in, to, upon, over, through and across the Easement Areas to and from the Leased Premises. To this end, the conveyance includes all rights and privileges as are necessary or incidental to the reasonable and proper uses of the Road Access Easements for

the purposes enumerated above. Nothing in this Grant Agreement is intended or shall be construed to give the public any right of access across the Road Access Easements notwithstanding the fact that it is being granted to a governmental entity. In addition to the foregoing and subject to any existing encumbrances of record, the POV and Truck Access Easement Areas shall also be for the purpose of maintaining, repairing, upgrading, inspecting, reconstructing, modifying, restoring, rebuilding, cleaning, installing, and altering within the defined scope of the Easement Areas, non-public roads for pedestrian and vehicular ingress and egress including, without limitation, cars, vans, buses, trucks, trailers, and other vehicles and equipment (including construction, delivery, transportation, oversized, heavy-haul and other vehicles and equipment), in, to, upon, over, through and across the Easement Areas to and from the Leased Premises

3. **Duration of Easements.** Each of the Road Access Easements shall commence on the Effective Date and continue thereafter until the termination of the Ground Lease.

4. **Grantor's Construction of Shared Material Center Road Easement Area.** Grantor shall cause the portion of the Shared Material Center Road Easement Area that does not contain a road substantially equivalent to the remaining portion of the Shared Material Center Road Easement Area to be reconstructed, refurbished, reinforced and repaired to a road that is substantially equivalent to the remaining portion of the Shared Material Center Road Easement Area at the cost and expense of Grantee pursuant to plans and specifications approved by Grantee. Grantor shall cause the plans, specifications and cost estimate for the reconstructed road to be submitted to Grantee by Grantor for review and approval prior to commencement of the reconstruction of the heavy haul road, which approval shall be granted within 30 days of receipt of said plans, specifications and cost estimate. Grantor shall cause such work to be completed on or before October 14, 2022, unless otherwise agreed to by the parties. Grantor shall cause all work to be performed in a workmanlike manner and in compliance with all applicable laws, ordinances, regulations and other legal requirements.

5. **Restrictions.** (a) **Nuclear Regulatory Compliance.** The right of access and egress and the conduct of operations within the Easement Areas is subject to the provisions, procedures and policies as established by Grantor in accordance with its nuclear operating license, practices and restrictions as required by any applicable authority, including, but not limited to, the Nuclear Regulatory Commission, industry practice, or industry self-regulation. Except for any such restrictions, Grantor shall not refuse any Grantee Party access and egress from the Easement Areas; provided, however, that in the event of a catastrophic incident or other imminent threat to human safety, Grantor may reasonably restrict access to any affected areas, including the Easement Areas, if necessary, for such time as may reasonably be necessary to remedy such danger and secure the facility from further threat.

(b) **Load Restrictions – Easement Parcel 5.** Grantee shall determine any load restrictions that are applicable to the Permanent POV & Truck Access Road West Easement #5 Area as it currently exists or as it may be hereafter constructed or reconstructed by Grantee and Grantee's Parties shall use such Easement Area in compliance with such load restrictions, provided that Grantee complies with a minimum requirement of H20 loading.

(c) **Height Restrictions – Easement Parcel 6 and Easement Parcel 7.** Due to overhead power lines located above the Permanent POV & Truck Access Road East Easement #6 Area and the Shared Material Center Road Easement Area, Grantee's use of such Easement Areas shall comply with the requirements of any applicable governmental regulations, codes, orders, standards, guidelines or rules, including, but not limited to, the National Electrical Code and the National Electrical Safety Code as applicable to clearances to any buildings or structures.

(d) **Performance of Work.** If applicable, Grantee shall perform all work in connection with the rights, privileges and authority herein granted and conveyed in a workmanlike manner, in compliance with all applicable laws, ordinances, regulations and other legal requirements and with a minimum of inconvenience to Grantor; and any damage done to the land or premises of Grantor shall be promptly repaired and restored to its condition immediately prior to damage at the sole cost and expense of Grantee.

(e) **Free Flowing Access: Alternative Access.** Grantee shall use the Easement Areas in a manner that preserves free flowing access to Grantor's Property. In exercising its rights hereunder, Grantee shall not impede or prevent access to Grantor's Property, and Grantee shall use commercially reasonable efforts to minimize interference with the use or operation of Grantor's Property by Grantor or others. If it is anticipated that any Grantee Party will be prevented from accessing any of the Easement Areas for any reason, Grantor shall immediately provide a reasonable alternate means of ingress or egress to the Leased Premises.

6. **Maintenance.** (a) Except with respect to the POV & Truck Access Easement Areas, Grantor shall maintain the Easement Areas and Grantor and Grantee agree that normal and routine maintenance expense incurred against the Easement Areas ("**Maintenance Expenses**") shall be paid in proportion to the parties' usage of the same. In the event additional or extraordinary maintenance expenses are incurred, the party necessitating such additional or extraordinary maintenance expenses shall be responsible for payment thereof. The parties shall agree to a calculation and schedule for the apportionment and payment of the Maintenance Expenses on an annual basis. The POV & Truck Access Easement Areas shall be maintained solely by Grantee.

7. **Grantor's Rights and Access to Easement Areas; Legal Requirements.** Grantor shall have the right to use, occupy and enjoy the surface, subsurface and air space above the Easement Areas for any purpose which does not, within the mutual reasonable discretion and judgment of Grantor and Grantee, interfere or threaten the safe, proper or convenient use, occupancy or enjoyment of same by Grantee. Grantee shall provide a means of access through at least one of the Easement Areas to the United States Army Corps ("US Army Corps") and Delaware Department of Natural Resources and Environmental Control ("DNREC"), which is necessary in order for the US Army Corps and DNREC to access their respective properties north of Grantor's Property. Further, Grantor and Grantee shall comply with the requirements of any applicable governmental regulations, codes, orders, standards, guidelines or rules, including, but not limited to, the National Electrical Code and the National Electrical Safety Code as applicable to clearances to any buildings or structures.

8. **Labor and Material Liens.** (a) No Party shall be liable for any labor or materials furnished or to be furnished to or for the other Party or to any other persons or entities claiming

under such other Party on credit, and that no mechanics' or other lien for any such labor or material furnished to a Party or such other persons or entities shall attach to or affect any property interest of any other Party.

(b) Grantee shall forthwith take such action necessary to discharge, remove, bond or satisfy any lien filed against Grantor's Property or any portion thereof for any labor, or materials furnished or to be furnished for or on behalf of Grantee, or any person or entity holding any portion thereof through or under Grantee.

9. **Enforcement of Easement.** Grantor shall not obstruct, impede, or interfere with the Road Access Easements or the Easement Areas, and Grantee shall not interfere with the rights of Grantor for ingress and egress over Grantor's Property encumbered hereby. Grantor, and future owners of Grantor's Property, shall be allowed access to the Easement Areas and use of the Road Access Easements; provided that the use of the Easement Areas by either Grantor or Grantee shall not interfere with the use of the Road Access Easements by the other Party or obstruct any portion of the Easement Areas. Subject to any encumbrances of record predating the Effective Date of this Grant Agreement, Grantor shall not place or allow any obstructions to be placed within the Easement Area that would in any way interfere with the use of Easement Area for its intended purpose. Either Party may notify, in writing, the other party of any apparent unauthorized use of the Road Access Easements in violation of the terms of this Grant Agreement. The Party receiving such written notification shall cease or take immediate steps to prevent further prohibited use of the Road Access Easements.

10. **Repairs.** Grantee shall repair any damage caused by the Work, activities or operations performed by Grantee or any Grantee Party related to the use of the Access Easement Area by the Grantee or any Grantee Party, it is expressly agreed and understood that, notwithstanding anything to the contrary in this Grant Agreement, as long as Grantee is a State Entity, Grantee assumes no obligation to indemnify or save harmless Grantor, its agents, servants, employees and subcontractors for any claim which may arise out of Grantee's performance of this Grant Agreement or otherwise hereunder.

11. **Insurance.** Grantee shall comply with the minimum requirements set forth in Article XV of the Ground Lease.

12. **Environmental Liability.** (a) It is further agreed that any use, discharge, storage, and/or disposal of Hazardous Materials, as defined by applicable federal and state Environmental Laws and in violation of Environmental Laws, in the Easement Areas which is the result of any act or omission by either Grantor or Grantee, shall be the sole responsibility of the Party causing such environmental condition, including all monetary expenses and/or fines levied by any governmental entity. The Party causing such environmental condition shall also immediately notify the other Party of such use, discharge, storage, and/or disposal of Hazardous Materials in violation of Environmental Laws as set forth below and be solely responsible for undertaking such corrective measures as is necessary to remediate any environmental condition pursuant to applicable Environmental Laws, as defined below, caused by that Party, as well as restoring any property affected by the environmental condition to the same or as good as condition as existing prior to such environmental condition. In no event shall NJEDA be responsible for any Hazardous

Materials that existed on or in any of the Road Access Easements or Easement Areas prior to the commencement date of the Road Access Easements.

(b) For purposes of this Grant Agreement and as used herein, (i) “Environmental Law” means any applicable federal, state, local or other law, statute, ordinance, rule, regulation, permit, judgment, order, decree, license, or other binding requirement of, or binding agreement with any governmental entity, now or hereafter in effect and, in each case, as amended from time to time, relating to or governing the presence, release, or threatened release of Hazardous Material the protection of natural resources, health, safety of the environment, or the management, manufacture, use, processing, sale, generation, handling, labeling, distribution, transportation, treatment, storage, disposal, remediation, disclosure, or notice of the presence, release or threatened release of Hazardous Material, including, without limitation, (a) the Atomic Energy Act, 42 U.S.C. § 2011 et seq., as amended, (b) the Clean Air Act, 42 U.S.C. § 7401 et seq., as amended, (c) CERCLA, (d) the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq., (e) the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 et seq., as amended, (f) the federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., as amended (“FWPCA”), (g) the Hazardous Material Transportation Act, 49 U.S.C. § 1801 et seq., as amended (“HMTA”), (h) the Low-Level Radioactive Waste Policy Act, 42 U.S.C. § 2021b et seq., as amended (“LLRWPA”), (i) the Nuclear Waste Policy Act of 1982, 42 U.S.C. § 10101 et seq., as amended (“NWSA”), (j) the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., as amended (“OSHA”), (k) the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., as amended (“RCRA”), (l) the Safe Drinking Water Act, 42 U.S.C. § 300f et seq., as amended, (m) the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., as amended (“TSCA”), (n) the substantive equivalent of any of the foregoing in any state or foreign jurisdiction, (o) the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., as amended (“ISRA”), (p) the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., as amended (“Spill Act”); (q) the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq., as amended (“SRRA”); and (r) the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, as amended (the “Tech Regs”); and (ii) “Hazardous Materials” means any chemical, material or substance, regardless of its form or nature, defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “solid waste,” “extremely hazardous waste,” “restricted hazardous waste,” “toxic substances,” “solid waste” “contaminants of emerging concern”, per- and polyfluoroalkyl substances (“PFAS”), perfluorooctanesulfonic acid (“PFOS”), perfluorooctanoic acid (“PFOA”), or words of similar import under any applicable Environmental Laws.

13. **Notices**. Any notice or other communication that either Party desires or is required to give to the other pursuant to this Grant Agreement shall be in writing and shall be considered given upon personal delivery or upon receipt by registered or certified U.S. mail or courier service addressed as follows:

As to Grantor: [Manager – Corporate Real Estate
PSEG Services Corporation
80 Park Plaza – Mail Code T-6B
Newark, New Jersey 07102]

With a copy to: [General Counsel-Nuclear

PSEG Services Corporation
80 Park Plaza – Mail Code T-6B
Newark, New Jersey 07102]

As to Grantee: [New Jersey Economic Development Authority
36 West State Street
Trenton, New Jersey 08625
Attention: _____]

With a copy to: Love and Long, LLP
108 Washington Street
Newark, New Jersey 07102
Attention: Reginald A. Long, Sr., Esq.

Upon written notice to the other Party, either Party may change its addressee for notices at any time.

14. **Modification.** Neither this Grant Agreement nor any of its terms, provisions, conditions, or covenants can be modified except by written instrument duly executed and recorded by both Parties.

15. **Severability.** If any of the provisions of this Grant Agreement shall be held invalid, illegal, or unenforceable, the validity, legality, or enforceability of the other provisions of this Grant Agreement as a whole shall remain unaffected.

16. **Binding Effect.** All the covenants, terms, conditions and restrictions contained in this Grant Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, and to their respective heirs, successors and assigns and shall continue as a servitude running with Grantor's Property until termination of the Ground Lease.

17. **Recordation of Grant of Easement.** Grantee shall record this Grant Agreement in a timely fashion in the office of the County Clerk of Salem County, New Jersey, and may re-record it at any time as may be required to preserve Grantee's rights hereunder.

18. Governing Law. The interpretation of and performances under this Grant Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey. All tort claims against NJEDA shall be governed by the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., and all contract claims against NJEDA shall be governed by the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1. The Parties agree that any litigation directly or indirectly relating to this Grant Agreement must be brought before and determined by a court of competent jurisdiction within Mercer County, New Jersey.

[Remainder of this page intentionally left blank]

[Signature Contained on Following Pages]

IN WITNESS WHEREOF, Grantor and Grantee have duly signed and sealed these presents the day and year first above written.

GRANTOR:

Attest:

[PSEG NUCLEAR LLC]

[By: PSEG Services Corporation, its Agent]

Name:

Title:

STATE OF NEW JERSEY)

COUNTY OF ESSEX)¹⁰
:SS.

BE IT REMEMBERED, that on this ____ day of _____, 2021, before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared _____, who, I am satisfied, is _____ named in and which executed the foregoing instrument, and (he/she) thereupon acknowledged that the said instrument was made by the entity and was signed and delivered by (him/her) as such officer and is the voluntary act and deed of the entity, made by virtue of authority from its member.

Notary

[Grantor Signature Page]

¹⁰ Check this notary

Attest:

GRANTEE:

[NEW JERSEY ECONOMIC DEVELOPMENT
AUTHORITY]

Name:

Title:

STATE OF NEW JERSEY)
 :SS.
COUNTY OF)

¹¹BE IT REMEMBERED, that on this ____ day of _____, 2021, before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared _____, who, I am satisfied, is the authorized officer of Grantee, named in and which executed the foregoing instrument.

.

Notary

\

[Grantee Signature Page]

¹¹ Check this notary.

Exhibit D – Temporary construction area license agreement

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this “License”), made this ____ day of December, 2021, between **PSEG NUCLEAR, LLC** (“Nuclear”), a Delaware limited liability company having an office at 80 Park Plaza, Newark, New Jersey 07102, and **THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY** (“NJEDA” and, with Nuclear, the “Parties”), a body corporate and politic organized and existing under the laws of the State of New Jersey having its principal offices located at 36 West State Street, P.O. Box 990, Trenton, New Jersey 08625.

WITNESSETH:

WHEREAS, Nuclear is the owner in fee simple of a certain tract of real property situated in the Township of Lower Alloways Creek, County of Salem, State of New Jersey, commonly known as Artificial Island (Block 26, Lots 4 and 5) (the “Property”); and

WHEREAS, Nuclear and NJEDA have entered into a certain Ground Lease, dated September 14, 2021 (the “Ground Lease”), pursuant to which Nuclear has agreed to lease to NJEDA, at various times and subject to various conditions, parcels of property that are adjacent the Property as set forth in the Ground Lease (the “Leased Premises”), subject to the terms and conditions set forth in the Ground Lease; and

WHEREAS, NJEDA desires to use portions of the Property shown and identified on the map entitled “NJ Wind Port Construction Areas” (the “Map”), which is attached hereto as Exhibit A and made a part hereof, for the purposes that include, but are not limited to, barge berth access, parking, materials laydown and storage, and as more specifically set forth herein, related to NJEDA’s construction, development, and operation of the Leased Premises for the New Jersey Wind Port (the “NJ Wind Port”); and

WHEREAS, Nuclear is willing to license the use of the Property as herein described to NJEDA;

NOW, THEREFORE, for the purposes set forth above and the recitals and mutual promises contained herein and for the further consideration set forth in Section 3, which the Parties acknowledge constitutes good and valuable consideration, the Parties agree as follows:

1. **Grant of License.** Nuclear hereby grants to NJEDA a license (this “License”) in each of the particular areas shown on the Map (“Temporary Areas”) with full rights, privileges and authority for NJEDA and its principals, officers, employees, lessees, sublessees, contractors, subcontractors, agents, representatives, guests or invitees (NJEDA and each such party are sometimes collectively referred to herein as the “NJEDA Parties” and, individually as a “NJEDA Party”) to enter upon same from time to time, and to use the Temporary Areas for the purposes set forth herein, each for a period beginning on the date of commencement of construction of the NJ Wind Port, which date shall be set forth in a notice given to Nuclear by NJEDA at least thirty (30) days prior to such commencement date (the “Commencement Date”), and continuing until December 31, 2027, unless otherwise agreed to by the parties in each party’s sole discretion, except

with respect to Area 13 (as hereinafter defined) which shall terminate in accordance with Section 1(e), or upon the earlier termination of one or more of the Temporary Areas at the option of NJEDA or Nuclear as set forth in Section 2, as follows:

(a) Area 1 consisting of 1.389 acres. A Temporary Area on the Property shown and identified as “Barge Berth Area” on the Map and as more particularly described on Exhibit B (“Area 1”) for the purpose of bringing construction materials, supplies and equipment via barge to the Leased Premises during the construction of the NJ Wind Port. The use of Area 1 by NJEDA shall be non-exclusive, provided that, subject to Section 1(g), Nuclear shall have priority use of Area 1 for the operation of Nuclear and its affiliate’s facilities and for the conduct of the business of Nuclear on the Property. At the request of NJEDA, Nuclear will relocate the de-silting line located in Area 1 at NJEDA’s sole cost and expense to be reimbursement by NJEDA pursuant to Section 10.

(b) Area 3 consisting of 1.23 acres. A Temporary Area on the Property shown and identified as “Storage Area” on the Map and as more particularly described on Exhibit C (“Area 3”) for the purpose of storing construction materials and equipment. The use of Area 3 by NJEDA shall be non-exclusive, which Area 3 is subject to use by Nuclear for its operations and by Silver Run Electric, LLC, pursuant to a Grant of Easement by and between Nuclear and Silver Run Electric, LLC, dated May 21, 2018, and recorded in Book 4408, Page 433 of the Salem County Clerk’s Office (the “Silver Run Easement”), and subject to Section 1(g). The use of Area 3 by Silver Run shall be subject to the terms and conditions of the Silver Run Easement. NJEDA shall provide a protection plan to Nuclear showing its contractor’s plans to ensure the protection of subterranean components in Area 3.

(c) Area 10 consisting of 0.72 acres. A Temporary Area on the Property shown and identified as “Contractor Parking” on the Map and as more particularly described on Exhibit D (“Area 10”) for the purpose of storing construction materials and equipment and parking vehicles for the NJEDA Parties working in Parcel A, Parcel C, Parcel G-1, Parcel G-2, Parcel G-3, Parcel D and Parcel E (as described in the Ground Lease) of the Leased Premises. Area 10 shall be used exclusively by the NJEDA Parties for the aforesaid purposes.

(d) Area 11 consisting of 1.50 acres. A Temporary Area on the Property shown and identified as “Trailer Compound” on the Map and as more particularly described on Exhibit E (“Area 11”) for the purpose of a trailer compound for the NJEDA Parties, which shall commence no earlier than February 1, 2022. Area 11 is subject to compliance with the easement rights of PSE&G and any other parties reflected in documents of record and the clearance requirements for the overhead power lines in this Temporary Area more particularly described in Section 4(c).

(e) Area 13 consisting of 22.78 acres. A Temporary Area on the Property shown and identified as “Parcel E Storage Area and Borrow Area” on the Map and as more particularly described on Exhibit F (“Area 13”) for the purpose of storing riprap and crushed concrete deposits, utilizing the area as swing space in connection with the

construction of the NJ Wind Port and borrowing and using soil and other materials on Area 13 in connection with the construction of the NJ Wind Port (e.g. for dike elevation) (collectively, the “Area 13 Work”) subject to the following restrictions: (i) Area 13 shall be left with positive drainage to prevent topographic depressions, which could result in the creation of areas exhibiting freshwater wetland characteristics; (ii) Area 13 shall, from time to time as necessary, be stabilized in accordance with approved soil erosion and sediment control plans including, but not limited to, application of mulch or seeded with native vegetation; and (iii) NJEDA will provide an excavation plan for Area 13 Work for prior review and approval by Nuclear, inclusive of proposed cut and fill documentation. If environmental testing is required pursuant to applicable law prior to the borrowing of materials located in Area 13 in connection with the Area 13 Work, Nuclear, at the request of NJEDA, shall, within twenty (20) business days after financial approval of the testing costs from NJEDA in accordance with Section 10, cause environmental samplings of such materials to be taken and environmental testing thereof to be performed by an environmental testing company certified by the State of New Jersey at NJEDA’s expense. No materials to fill Area 13 shall be imported to Area 13 by or on behalf of NJEDA except: (a) in compliance with applicable law; and (b) as approved by Nuclear, which approval shall not be unreasonably conditioned, delayed or withheld. Prior to importing any such materials, Nuclear shall be provided with such documentation for its review as Nuclear reasonably requires to confirm that the importation of such materials would be in compliance with applicable law, which review shall, subject to Section 10, be at NJEDA’s cost. With respect to any approvals of Nuclear required by this Section, Nuclear shall have a period of thirty (30) business days following the receipt of any request for approval from NJEDA to approve or disapprove such request in writing, with any such disapproval to state in reasonable detail the reasons for such disapproval. Unless otherwise agreed to by the Parties in writing, NJEDA’s use of Area 13 shall terminate upon the earlier of commencement of construction of a CDF for Nuclear or December 31, 2027.

(f) Temporary Roads. Nuclear hereby grants to NJEDA access in, to, upon, over, through and across Temporary Areas without advance notice required through the Material Center Road shown and identified as such on the Map and the roads as shown and identified on the Map as follows:

1. Area 2 shown and identified on the Map as the “Barge Berth Road” and as more particularly described on Exhibit G;
2. Area 4 shown and identified on the Map as the “Road to Storage Area” and as more particularly described on Exhibit H;
3. Area 12 shown and identified on the Map as the “Road to Trailer Compound” and as more particularly described on Exhibit I; and
4. Area 15 shown and identified on the Maps as the “Parcel E Construction Area Road” and as more particularly described on Exhibit J,

(collectively, with the Material Center Road, referred to herein as the “Temporary Roads”). NJEDA shall be responsible for salting and snow and ice removal on the Temporary Roads and may be required to restore and/or re-pave the roadways in compliance with Section 4(d).

(g) **Notice of Priority Use.** In the event that Nuclear or its affiliates require the use of Area 1 or Area 3, Nuclear shall provide at least seventy-two (72) hours’ prior written notice to NJEDA to cease use of such Temporary Area and to remove any equipment or materials of the NJEDA Parties located thereon, which notice shall specify the date that the NJEDA Parties must cease use of such Temporary Area for use by Nuclear or its affiliates (the “Temporary Cessation Date”) and the anticipated date that the NJEDA Parties are expected to be able to recommence use of such Temporary Area (the “Anticipated Recommencement Date”). In the event that the NJEDA Parties, utilizing commercially reasonable efforts, cannot remove any equipment and materials located on such Temporary Area within said seventy-two (72) hour period, then NJEDA shall be provided the additional time required to remove such equipment and materials in a commercially reasonable manner, which shall not exceed seven (7) business days after the Temporary Cessation Date. Once Nuclear or its affiliates have determined the actual date that their use of such Temporary Area will be completed, Nuclear shall provide a written notice to NJEDA replacing the Anticipated Recommencement Date with the actual date that the NJEDA Parties may recommence use of such Temporary Area.

2. **Termination.** Either Party may terminate one or more Temporary Areas prior to December 31, 2027 upon one hundred twenty (120) days’ prior written notice to the other Party; provided, however, that Nuclear may only terminate Area 13 upon one hundred eighty (180) days’ prior written notice to NJEDA; and provided, further, that in no event shall Nuclear terminate this License to use any Temporary Area unless such Temporary Area is required for the use of Nuclear in connection with the operation of its business at the Property.

3. **Compensation.** NJEDA shall compensate Nuclear for the use of each of the Temporary Areas (excluding the Temporary Roads) by the NJEDA Parties from the Commencement Date to the termination date of such Temporary Area, based on an amount equal to Two Thousand and 00/100 DOLLARS (\$2,000.00) per acre annually.

4. **Restrictions.** (a) **Nuclear Regulatory Compliance.** Notwithstanding anything herein to the contrary, the right of access and egress and the conduct of operations within the Temporary Areas is subject to the provisions, procedures and policies as established by Nuclear in accordance with its nuclear operating license, practices and restrictions as required by any applicable authority, including, but not limited to, the Nuclear Regulatory Commission, industry practice, or industry self-regulation by a standard-setting organization. Except for any such restrictions and as provided in Section 4(e), Nuclear shall not refuse any NJEDA Party access and egress from the Temporary Areas; provided, however, that in the event of a catastrophic incident or other imminent threat to human safety or if required in accordance with its nuclear operating license, practices and restrictions and any applicable authority, including, but not limited to, the Nuclear Regulatory Commission, industry practice, or industry self-regulation by a standard-setting organization, Nuclear may reasonably restrict access to any affected areas, including the

Temporary Areas, if necessary, for such time as may reasonably be necessary to remedy such danger and secure the facility from further threat.

(b) **Load Restrictions – Area 1.** Prior to the use of Area 1 by any NJEDA Party, NJEDA shall obtain a report from a qualified professional that determines the load restrictions that are applicable to Area 1 as it currently exists and provide a copy thereof to Nuclear. Based upon the findings set forth in such report, NJEDA and Nuclear shall then agree upon the maximum load bearing capacity for the NJEDA Parties' use of Area 1 and the NJEDA's Parties shall use Area 1 in compliance with such load restrictions.

(c) **Height and Subsurface Restrictions.** The NJEDA Parties' use of the Temporary Areas shall comply with the requirements of the National Electrical Code and the National Electrical Safety Code, the Department of Transportation Minimum Federal Safety Standards promulgated under the authority of the Natural Gas Pipeline Safety Act of 1968, and the "Underground Facility Protection Act," as applicable to required clearances to any electric or gas facilities on the Property. Furthermore, other than temporary trailers and equipment, no buildings or structures shall be erected within any of the Temporary Areas.

(d) **Performance of Temporary Area Work.** NJEDA shall perform all work in the Temporary Areas (together with the Area 13 Work, the "Temporary Area Work") in connection with the rights, privileges and authority herein granted and conveyed in a workmanlike manner, in compliance with all applicable laws, ordinances, regulations and other legal requirements and with a minimum of inconvenience to Nuclear; and any damage done to the land or premises of Nuclear shall be promptly repaired and restored to its condition immediately prior to damage at the sole cost and expense of NJEDA, except that Area 13 shall be repaired and restored in accordance with Section 1(e). During the performance of the Temporary Area Work or any other activity in the Temporary Areas, the NJEDA Parties shall at all times provide suitable barriers and other safety measures, including but not limited to, maintaining suitable work area protection, and shall take such other protective measures as reasonably directed by Nuclear. Subject to Section 10, NJEDA shall reimburse Nuclear or its licensee for the commercially reasonable costs and expenses of all personnel, inspectors, labor, materials, equipment, and any other costs and expenses incurred in connection with any review of plans, documents or field inspection and supervision of the Temporary Area Work performed by the NJEDA Parties upon submission of copies of invoices received by Nuclear from contractors assisting with such activities, itemized internal costs and invoices for other related fees and costs to be reimbursed.

(e) **Interference.** In the event that the Nuclear representative or his/her designee determines that the Temporary Area Work or activities by the NJEDA Parties unduly interfere with the operations of Nuclear's or its affiliate's or licensee's facilities or constitute a hazard to life or property, upon written notice to NJEDA setting forth the specific Temporary Area Work or activities by the NJEDA Parties that constitute the circumstances giving rise to the concerns, except if such written notice is not immediately possible (in which case, written notice will be provided as soon thereafter as practicable), the NJEDA Parties shall immediately suspend the Temporary Area Work and activities that are the subject of such notice until such time as Nuclear and NJEDA reasonably determine that the Temporary Area Work or activities may safely resume. A list of all licensees that as of the date hereof have rights to use any of the Temporary Areas and

the Temporary Areas that each licensee is entitled to use are set forth on Schedule A attached hereto, it being understood that the licensees entitled to use any of the Temporary Areas may change after the date hereof.

(f) **Free Flowing Access; Alternative Access.** The NJEDA Parties shall use the Temporary Areas in a manner that preserves free flowing access to the Property. In exercising its rights hereunder, NJEDA shall not impede or prevent access to the Property, and NJEDA shall use commercially reasonable efforts to minimize interference with the use or operation of the Property by Nuclear or others. If it is anticipated that any NJEDA Party will be prevented from accessing any of the Temporary Areas for any reason, Nuclear shall provide a reasonable alternate means of ingress or egress to the Temporary Areas.

5. **Enforcement of License.** Nuclear shall not obstruct, impede, or interfere with the Temporary Areas or Temporary Roads, and NJEDA shall not interfere with the rights of Nuclear for ingress and egress over the Property encumbered thereby. Nuclear, and future owners of the Property, shall be allowed access to the Temporary Areas and use of the Temporary Roads; provided that the use of the Temporary Areas by either Nuclear or NJEDA shall not interfere with the use of the Temporary Areas by the other Party or obstruct any portion of the Temporary Areas. Subject to any encumbrances of record predating the date of this License, Nuclear shall not place or allow any obstructions to be placed within the Temporary Areas that would in any way interfere with the use of Temporary Areas for their intended purpose. Either Party may notify, in writing, the other party of any apparent unauthorized uses of the Temporary Areas in violation of the terms of this License. The Party receiving such written notification shall cease or take immediate steps to prevent further prohibited use of the Temporary Areas.

6. **Nuclear's Operating Guidelines.** NJEDA shall comply with Nuclear's Operating Guidelines set forth on Schedule B attached hereto.

7. **Insurance.** NJEDA shall comply with the minimum requirements set forth in Article XV of the Ground Lease.

8. **Environmental.** (a) NJEDA shall comply with all Environmental Laws that are or become applicable to NJEDA's activities on the Temporary Areas. Except as otherwise provided in Section 1(e), no excavation will be done in the Temporary Areas and no environmental studies will be performed in the Temporary Areas, including, but not limited to the chemical analysis of the native soil of the Temporary Areas, unless specifically authorized by Nuclear.

(b) It is further agreed that any use, discharge, storage, and/or disposal of Hazardous Materials, as defined by applicable federal and state Environmental Laws and in violation of Environmental Laws, in the Temporary Areas which is the result of any act or omission by either Nuclear or NJEDA, shall be the sole responsibility of the Party causing such environmental condition, including all monetary expenses and/or fines levied by any governmental entity. In the event NJEDA causes such environmental condition, NJEDA shall immediately notify Nuclear of any such use, discharge, storage and/or disposal of Hazardous Materials in violation of Environmental Laws, as defined below, in accordance Section 9 and be solely responsible for undertaking such corrective measures as is necessary to remediate any environmental condition

pursuant to applicable Environmental Laws caused by NJEDA, as well as restoring any property affected by the environmental condition to the same or as good as condition as existing prior to such environmental condition. In no event shall NJEDA be responsible for (i) the investigation and/or remediation of any Hazardous Materials that existed on or in any of the Temporary Areas prior to the commencement date for the License granted for any of the Temporary Areas or (ii) any radioactive material or contamination existing on or in any of the Temporary Areas. Any waste materials generated as a result of environmental conditions caused by NJEDA shall be disposed of in accordance with all applicable federal, state and local laws and regulations and related NJDEP guidance. NJEDA shall identify itself as the generator on all waste manifests and shipping papers necessary for the offsite disposition of any such waste materials generated as a result of environmental conditions caused by NJEDA.

(c) For purposes of this License and as used herein, (i) “Environmental Law” means any applicable federal, state, local or other law, statute, ordinance, rule, regulation, permit, judgment, order, decree, license, or other binding requirement of, or binding agreement with any governmental entity, now or hereafter in effect and, in each case, as amended from time to time, relating to or governing the presence, release, or threatened release of Hazardous Material the protection of natural resources, health, safety of the environment, or the management, manufacture, use, processing, sale, generation, handling, labeling, distribution, transportation, treatment, storage, disposal, remediation, disclosure, or notice of the presence, release or threatened release of Hazardous Material, including, without limitation, (a) the Atomic Energy Act, 42 U.S.C. § 2011 et seq., as amended, (b) the Clean Air Act, 42 U.S.C. § 7401 et seq., as amended, (c) CERCLA, (d) the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq., (e) the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 et seq., as amended, (f) the federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., as amended (“FWPCA”), (g) the Hazardous Material Transportation Act, 49 U.S.C. § 1801 et seq., as amended (“HMTA”), (h) the Low-Level Radioactive Waste Policy Act, 42 U.S.C. § 2021b et seq., as amended (“LLRWPA”), (i) the Nuclear Waste Policy Act of 1982, 42 U.S.C. § 10101 et seq., as amended (“NWPAA”), (j) the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., as amended (“OSHA”), (k) the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., as amended (“RCRA”), (l) the Safe Drinking Water Act, 42 U.S.C. § 300f et seq., as amended, (m) the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., as amended (“TSCA”), (n) the substantive equivalent of any of the foregoing in any state or foreign jurisdiction, (o) the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., as amended (“ISRA”), (p) the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., as amended (“Spill Act”), (q) the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq., as amended (“SRRA”) and (r) the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, as amended (the “Tech Regs”); and (ii) “Hazardous Materials” means any chemical, material or substance, regardless of its form or nature, defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “solid waste,” “extremely hazardous waste,” “restricted hazardous waste,” “toxic substances,” “solid waste,” “contaminants of emerging concern”, per- and polyfluoroalkyl substances (“PFAS”), perfluorooctanesulfonic acid (“PFOS”), perfluorooctanoic acid (“PFOA”), or words of similar import under any applicable Environmental Laws.

9. Property Damage and Environmental Incidents in Temporary Areas. Within thirty (30) minutes after NJEDA’s knowledge of the occurrence of any use, discharge, storage

and/or disposal of Hazardous Materials in violation of Environmental Laws on the Temporary Areas or any incident involving property damage to any of the Temporary Areas, in each case, arising out of the performance of Temporary Area Work by any NJEDA Party and/or use and occupancy of the Temporary Areas by any NJEDA Party, NJEDA shall notify Nuclear of such environmental discharge or property damage incident, and if requested by Nuclear, NJEDA shall provide a written report to Nuclear detailing such incident within twenty-four (24) hours after the occurrence thereof. Within seven (7) days (unless a shorter period of time is required by applicable law or to protect health, life or safety in which case such shorter period of notification shall be required) after the occurrence of any use, discharge, storage and/or disposal of Hazardous Materials in violation of Environmental Laws on the Property by Nuclear or any of its affiliates or licensees or any incident involving property damage to any of the Temporary Areas caused by Nuclear or any of its affiliates or licensees that may impact the NJEDA or its use of the Temporary Areas, Nuclear shall notify NJEDA of such environmental discharge or property damage incident and, if requested by NJEDA shall provide a written notice to NJEDA detailing such incident within twenty-four (24) hours of the request. Notification to Nuclear shall be provided to the Nuclear Project Manager at XXXX 609-774-3142 or the Shift Manager (24 hours a day; 7 days a week) at 856-339-3333. Notice to NJEDA shall be either provided to _____ or to _____ (24 hours a day; 7 days a week). Such notice shall not relieve NJEDA or Nuclear of its obligations under this License, if applicable, and shall not be construed to be other than a mere notification.

10. **Reimbursement of Costs and Expenses.** Anything herein to the contrary notwithstanding, at any time that NJEDA is required to reimburse or pay the costs and expenses of the performance by Nuclear of any work, review or other activity in accordance with this License, including without limitation, pursuant to Sections 1(a), 1(e), and 4(d), prior to the performance of such work, review or other activity or the incurring any costs and expenses in connection therewith, Nuclear shall submit to NJEDA for its approval purchase orders from the contractors required to perform such activity and projections of the anticipated costs of Nuclear's internal personnel necessary to assist in such activity. NJEDA shall reimburse Nuclear for such costs upon submission by Nuclear to NJEDA of copies of invoices received from such contractors which are consistent with the related purchase orders and itemized invoices of Nuclear for the actual reasonable costs of its internal personnel.

11. **Binding Effect.** Anything herein to the contrary notwithstanding, the covenants, terms, conditions restrictions contained herein shall be binding upon and shall inure to the benefit of the Parties hereto, and their respective heirs, successors and assigns and shall constitute a servitude running with the Property until termination of this License in accordance with the terms hereof.

12. **Assignment.** This License may not be assigned without the written consent of Nuclear in its sole discretion except as required by law to an entity of the State of New Jersey.

13. **Governing Law.** The interpretation of and performance under this License shall be governed by and construed in accordance with the laws of the State of New Jersey. All tort claims against NJEDA shall be governed by the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., and all contract claims against NJEDA shall be governed by the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1. The Parties agree that any litigation directly or indirectly relating to this License

must be brought before and determined by a court of competent jurisdiction within Mercer County, New Jersey.

14. **Modification.** Neither this License nor any of its terms, provisions, conditions, or covenants can be modified except by written instrument duly executed by both Parties.

15. **Notices.** Except as required by Section 9, any notice or other communication, including coordination of any Temporary Area Work, that either Party desires or is required to give to the other pursuant to this License shall be in writing and shall be considered given upon personal delivery or upon receipt by registered or certified U.S. mail or courier service addressed as follows:

As to Nuclear: Manager-Corporate Real Estate
PSEG Services Corporation
80 Park Plaza – Mail Code T6B
Newark, New Jersey 07102

With a copy to: Associate General Nuclear Counsel
PSEG Services Corporation
80 Park Plaza, Mail Code T5
Newark, New Jersey 07102

and to: Property Counsel
PSEG Services Corporation
80 Park Plaza – Mail Code T5
Newark, New Jersey 07102

As to NJEDA: New Jersey Economic Development Authority
36 West State Street
Trenton, New Jersey 08625
Attention: _____

With a copy to: Love and Long, LLP
108 Washington Street
Newark, New Jersey 07102
Attention: Reginald A. Long, Sr., Esq.

Upon written notice to the other Party, either Party may change its addressee for notices at any time.

16. **Severability.** If any of the provisions of this License shall be held invalid, illegal, or unenforceable, the validity, legality, or enforceability of the other provisions of this License as a whole shall remain unaffected.

THIS SPACE INTENTIONALLY LEFT BLANK.

Signature page follows

IN WITNESS WHEREOF, the Parties have executed this License on the date hereinbefore first indicated.

WITNESS:

PSEG NUCLEAR LLC

By: PSEG Services Corporation, Its Agent

By: _____

Name:

Title:

Transactions

By: _____

Roger J. Trudeau

Manager – Corporate Real Estate

WITNESS:

**THE NEW JERSEY ECONOMIC
DEVELOPMENT AUTHORITY**

By: _____

By:

Name:

Title:

Name:

Title:

SCHEDULE A

A list of current licensees will be included with the license – this is being finalized by PSEG

SCHEDULE B

NUCLEAR'S OPERATING GUIDELINES

1. Chemical control and Environmental spill plan – elements should include storage, type and quantities along with MSDS, spill kits, initial response and vendor for large scope clean-up, prevention for spill getting into the environment via location to storm water outfalls etc. Nuclear has reporting requirements to the state of NJ and NRC. Chemicals are bounded by the hazard analysis.
2. Medical and Fire plan and prevention –Who to call if an event occurs. At no time shall material loading be allowed to create a fire in any area, in particular be stored under 500kv power lines (trailer area)
3. Areas clearly marked with contact information and PSEG point of contact
4. Heavy material storage areas – need to provide documentation on the footprint and weight to be stored with any analysis so nuclear can verify the expected loads do not impact any site components (above and below grade). Height of such storage for review to ensure not a security concern.
5. Need to ensure nuclear assets in the temp work area are protected and not damaged. Plan on protecting nuclear assets in area
6. Trailers need to follow nuclear procedure for being installed, this includes wind restraints, fire extinguisher and LAC electrical permits (all in the procedure)
7. Trash removal and areas maintain housekeeping standards – plan for PSEG review
8. Vehicle control including heavy construction equipment that are planned to be stored parked in temp work locations.
9. Security search and LAC police – vehicles and trailers are subject to search per our security criteria and LAC.
10. Pandemic controls and cleaning of trailers etc. – plan for changing pandemic requirements.
11. Nuclear safety training for individuals working in this area.

Exhibit E – Key terms governing a license agreement for Parcel B

| Term category | Proposed business term(s) |
|--|--|
| 1. Form of agreement | - The use agreement will take the form of a License Agreement (the “License”) between the New Jersey Economic Development Authority (“NJEDA”) and NDEV LLC (“PSEG”) that is similar to the temporary construction area license agreement. (Each of NJEDA and PSEG are referred to herein as a “Party” and collectively, the “Parties”). |
| 2. Commencement Date | - To take effect on January 1, 2022, or as soon practicable after PSEG takes title, (the “Commencement Date”), subject to (a) the Parties’ execution of the License and (b) satisfaction of the conditions precedent listed in Section 3 below. |
| 3. Conditions precedent to commencement | - The occurrence of the Commencement Date shall be contingent on the following conditions precedent: <ul style="list-style-type: none"> ▪ PSEG having fee title; ▪ NJEDA having drawn down on Parcels A and G-1 under the Ground Lease Agreement; ▪ PSEG providing NJEDA with a copy of the Exchange Agreement between the USACE and PSEG, with certain commercial terms redacted; and ▪ A letter of reliance from AKRF regarding its February 2021 Phase 1 environmental assessment. |
| 4. Parties’ commitment to the transfer of Parcel B | - The Parties acknowledge that: <ul style="list-style-type: none"> (a) NJEDA intends to purchase from PSEG the area of land referred to as “Parcel B” adjacent to land located at Lower Alloways Creek (“Parcel B” or the “Parcel”); (b) NJEDA intends to accept the Parcel on an “as-is” basis with respect to the condition of the Parcel; (c) PSEG has informally agreed to a sale price of \$24.25 million (“Agreed Price”) for the Parcel, subject to reaching mutual agreement on other terms and conditions related to the sale; and (d) The Parties intend to negotiate in good faith to prepare a purchase and sale agreement (“Sale Agreement”) and consummate the sale and transfer of title to NJEDA during the first quarter of 2022. - Based on the foregoing, NJEDA and PSEG commit to diligently pursue all steps and approvals required to enter into a mutually agreed Sale Agreement and pay the Agreed Price. |
| 5. Termination | - Unless otherwise agreed to/extended by the Parties, in each Party’s sole discretion, the License would terminate upon the earlier of: <ul style="list-style-type: none"> - The date of the transfer of title to the Parcel to NJEDA; or - December 31, 2022. - If termination occurs other than through a transfer of title (i.e., sale doesn’t complete by 12/31/2022 and parties do not agree to extend), NJEDA shall be responsible, at its sole cost and expense, for restoring the Parcel to the same or better condition as compared to its condition on the Commencement Date; provided that such restoration obligation is subject to the following conditions: <ul style="list-style-type: none"> - The Parties’ failure to enter into the Sale Agreement by 12/31/2022 has not been caused by PSEG’s breach of its commitment to sell the Parcel as set forth above or failure to negotiate the Sale Agreement in good faith; and - NJEDA shall be provided the time reasonably required, but in no event greater than six (6) months, to have the Parcel restored to the necessary condition. |
| 6. Permitted uses | - The License shall grant NJEDA and its principals, officers, employees, lessees, sublessees, contractors, subcontractors, agents, representatives, guests or invitees (“NJEDA Parties” and, individually, a “NJEDA Party”) the right to enter onto the Parcel for purposes that include: |

| | |
|--------------------------------|---|
| | <ul style="list-style-type: none"> - The removal of up to 900,000 Cubic Yards (CY) of material for the purposes of site elevation and surcharge on the leased premises; and - Construction of CDF improvements necessary to accommodate a future dredge placement volumes of up to 2 million CYs, including but not limited to: dikes; berms; spillway; and associated dewatering improvements. - Prior to NJEDA's undertaking of works on the Parcel, PSEG shall be provided with such documentation for its review as PSEG reasonably requires to confirm that improvements and/or materials removal will be in compliance with applicable law, which review shall be at NJEDA's cost. - PSEG shall have a period of twenty (20) business days following the receipt of any request for approval from NJEDA to approve or disapprove such request in writing, with any such disapproval to state in reasonable detail the reasons for such disapproval. - No materials shall be imported to the Parcel by or on behalf of NJEDA. |
| 7. Right of access | <ul style="list-style-type: none"> - NJEDA to allow ingress/egress by PSEG, USACE and DNREC (noting 'interference' and 'enforcement' terms below) |
| 8. Interference | <ul style="list-style-type: none"> - In the event that a PSEG representative or his/her designee determines that the Work unduly interferes with the operations of PSEG or its affiliate's or licensee's facilities or constitute a hazard to life or property, upon written notice to NJEDA, except if such written notice is not immediately possible, the NJEDA Parties shall immediately suspend Work and activities that are the subject of such notice until such time as PSEG and NJEDA reasonably determine that Work or activities may safely resume. |
| 9. Testing | <ul style="list-style-type: none"> - Other than as required by applicable law, no environmental sampling shall be allowed without PSEG approval, such approval being at PSEG's discretion - If testing is required pursuant to applicable law, NJEDA shall submit to PSEG for review and comment a proposed scope of work for such testing. PSEG shall have twenty (20) business days to review and provide comments on the scope of work and submit a cost proposal to NJEDA. Site conditions permitting, PSEG, at the request of NJEDA, shall, within twenty (20) business days after financial approval of testing costs from NJEDA cause environmental samplings of such materials to be taken and environmental testing thereof shall be performed by an environmental testing company certified by the State of New Jersey at NJEDA's expense. |
| 10. Enforcement of license | <ul style="list-style-type: none"> - PSEG shall not obstruct, impede, or interfere with the Work, except as otherwise permitted herein. - NJEDA shall not interfere with the rights of PSEG (and USACE or DNREC) for ingress and egress over the Parcel encumbered thereby. - PSEG may notify, in writing, NJEDA of any apparent unauthorized uses of the Parcel in violation of the terms of this License. NJEDA shall cease or take immediate steps to prevent further prohibited use of the Parcel. |
| 11. Insurance | <ul style="list-style-type: none"> - NJEDA shall comply with the minimum requirements set forth in Article XV of the Ground Lease. |
| 12. Performance of Parcel Work | <ul style="list-style-type: none"> - NJEDA shall perform all work in the Parcel in connection with the rights, privileges and authority herein granted and conveyed in a workmanlike manner, in compliance with all applicable laws, ordinances, regulations and other legal requirements and with a minimum of inconvenience to PSEG. - Any damage to the Parcel shall be promptly repaired and restored to its condition immediately prior to damage at the sole cost and expense of NJEDA, unless otherwise agreed to by PSEG. - NJEDA shall reimburse PSEG or its licensee for the commercially reasonable costs and expenses of all personnel, inspectors, labor, materials, equipment, and any other |

| | |
|------------------|--|
| | <p>costs and expenses incurred in connection with any review of plans, documents or field inspection and supervision of the Parcel Work performed by the NJEDA Parties upon submission of copies of invoices received by PSEG from contractors assisting with such activities, itemized internal costs and invoices for other related fees and costs to be reimbursed. NJEDA's reimbursement obligation is subject to, and shall be performed in accordance with, the cost reimbursement requirements in Section 15 below.</p> |
| 13.Environmental | <ul style="list-style-type: none"> - NJEDA shall comply with all Environmental Laws that are or become applicable to NJEDA's activities on the Parcel. Except as otherwise provided in Section 5 (Permitted uses), no excavation will be done in the Parcel and no environmental studies will be performed in the Parcel, including, but not limited to the chemical analysis of the native soil and/or fill in the Parcel, unless specifically approved by PSEG. - It is further agreed that any use, discharge, storage, and/or disposal of Hazardous Materials, as defined by applicable federal and state Environmental Laws and in violation of Environmental Laws, in the Parcel which is the result of any act or omission by either PSEG or NJEDA during the License term, shall be the sole responsibility of the Party causing such environmental condition, including all monetary expenses and/or fines levied by any governmental entity. - In the event NJEDA causes such environmental condition, NJEDA shall immediately notify PSEG of any such use, discharge, storage and/or disposal of Hazardous Materials in violation of Environmental Laws, as defined below, and be solely responsible for undertaking such corrective measures as is necessary to remediate any environmental condition pursuant to applicable Environmental Laws caused by NJEDA, as well as restoring any property affected by the environmental condition to the same or as good as condition as existing prior to such environmental condition. - In the event NJEDA's activities at the Parcel during the term of the License result in the determination of the presence of Hazardous Materials that existed on or in the Parcel prior to the Commencement Date and require investigation and/or remediation in accordance with Environmental Laws, NJEDA shall be responsible for conducting such investigation and/or remediation at NJEDA's expense in compliance with Environmental Laws. - Any waste materials generated as a result of activities conducted by NJEDA shall be disposed of in accordance with all applicable federal, state and local laws and regulations and related NJDEP guidance. - NJEDA shall identify itself as the generator on all waste manifests and shipping papers necessary for the offsite disposition of any such waste materials. - For purposes of this License and as used herein, (i) "Environmental Law" means any applicable federal, state, local or other law, statute, ordinance, rule, regulation, permit, judgment, order, decree, license, or other binding requirement of, or binding agreement with any governmental entity, now or hereafter in effect and, in each case, as amended from time to time, relating to or governing the presence, release, or threatened release of Hazardous Material the protection of natural resources, health, safety of the environment, or the management, manufacture, use, processing, sale, generation, handling, labeling, distribution, transportation, treatment, storage, disposal, remediation, disclosure, or notice of the presence, release or threatened release of Hazardous Material, including, without limitation, (a) the Atomic Energy Act, 42 U.S.C. § 2011 et seq., as amended, (b) the Clean Air Act, 42 U.S.C. § 7401 et seq., as amended, (c) CERCLA, (d) the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq., (e) the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 et seq., as amended, (f) the federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., as amended ("FWPCA"), (g) the Hazardous Material Transportation Act, 49 U.S.C. § 1801 et seq., as amended ("HMTA"), (h) |

| | |
|---|---|
| | <p>the Low-Level Radioactive Waste Policy Act, 42 U.S.C. § 2021b et seq., as amended (“LLRWPA”), (i) the Nuclear Waste Policy Act of 1982, 42 U.S.C. § 10101 et seq., as amended (“NWPA”), (j) the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., as amended (“OSHA”), (k) the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., as amended (“RCRA”), (l) the Safe Drinking Water Act, 42 U.S.C. § 300f et seq., as amended, (m) the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., as amended (“TSCA”), (n) the substantive equivalent of any of the foregoing in any state or foreign jurisdiction, (o) the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq., as amended (“ISRA”), (p) the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., as amended (“Spill Act”), (q) the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq., as amended (“SRRA”) and (r) the Technical Requirements for Site Remediation, N.J.A.C. 7:26E, as amended (the “Tech Regs”); and (ii) “Hazardous Materials” means any chemical, material or substance, regardless of its form or nature, defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “solid waste,” “extremely hazardous waste,” “restricted hazardous waste,” “toxic substances,” “solid waste,” “contaminants of emerging concern”, per- and polyfluoroalkyl substances (“PFAS”), perfluorooctanesulfonic acid (“PFOS”), perfluorooctanoic acid (“PFOA”), or words of similar import under any applicable Environmental Laws.</p> <ul style="list-style-type: none"> - Notwithstanding anything herein to the contrary, if PSEG assumes fee title of the Parcel and breaches its commitment to sell the Parcel or fails to negotiate the Sale Agreement in good faith as described in Section 4 above, despite NJEDA’s willingness to purchase the Parcel and good faith negotiations, then PSEG shall reimburse NJEDA for any costs related to remediation work that NJEDA has completed on the property during the license term. - In no event shall NJEDA be held responsible for the remediation of Hazardous Materials that are established by a preponderance of the evidence standard as having resulted from any act or omission by PSEG prior to the license commencement date. In no event shall NJEDA be held responsible for the remediation of any radioactive materials. - In no event shall NJEDA be held responsible for the investigation and/or remediation of any Hazardous Materials whose presence is determined to exist on or in the Parcel after the termination of the license, including such hazardous materials that existed on or in the parcel prior to the license commencement date that may be identified due to NJEDA’s past use, unless it is established by a preponderance of the evidence standard that the existence of any such hazardous materials was solely by a discharge or release by NJEDA during the license term. |
| 14. Property Damage & Environmental Incidents in the Parcel | <ul style="list-style-type: none"> - Within thirty (30) minutes after the occurrence of any discharge of Hazardous Materials in violation of Environmental Laws on the Parcel arising out of the performance of Work by any NJEDA Party and/or use and occupancy of the Parcel by any NJEDA Party, NJEDA shall notify PSEG of such environmental discharge, and if requested by PSEG, NJEDA shall provide a written report to PSEG detailing such incident within twenty-four (24) hours after the occurrence thereof. |
| 15. Cost reimbursement | <ul style="list-style-type: none"> - Anything herein to the contrary notwithstanding, at any time that NJEDA is required to reimburse or pay the costs and expenses of the performance by PSEG of any work, review or other activity in accordance with this License, prior to the performance of such work, review or other activity or the incurrence any costs and expenses in connection therewith, PSEG shall submit to NJEDA for approval purchase orders from the contractors required to perform such activity for approval, which shall not be unreasonably withheld PSEG will send projections of the anticipated costs of PSEG’s internal personnel necessary to assist in such activity. NJEDA shall reimburse PSEG for such costs upon submission by PSEG to NJEDA of copies of invoices received from such contractors which are consistent with the related purchase orders that have |

| | |
|-------------------|---|
| | been approved by NJEDA and itemized invoices of PSEG for the actual costs of its internal personnel. |
| 16. Assignment | - This License may not be assigned without the written consent of PSEG in its sole discretion except as required by law to an entity of the State of New Jersey. |
| 17. Governing law | <ul style="list-style-type: none"> - The interpretation of and performance under this License shall be governed by and construed in accordance with the laws of the State of New Jersey. All tort claims against NJEDA shall be governed by the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., and all contract claims against NJEDA shall be governed by the New Jersey Contractual Liability Act, N.J.S.A. 59:13 - The Parties agree that any litigation directly or indirectly relating to this License must be brought before and determined by a court of competent jurisdiction within Mercer County, New Jersey. |