



## **MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Timothy Sullivan  
Chief Executive Officer

**DATE:** March 8, 2023

**SUBJECT:** Agenda for Board Meeting of the Authority March 8, 2023

### **Notice of Public Meeting**

### **Roll Call**

### **Approval of Previous Month's Minutes**

### **CEO's Report to the Board**

### **Authority Matters**

### **Incentives**

### **Real Estate**

### **Board Memoranda**

### **Public Comment**

### **Adjournment**

# **NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

**February 8, 2023**

## **MINUTES OF THE MEETING**

*The Meeting was held in-person and by teleconference call.*

Members of the Authority present in person: Noreen Giblin, Executive Representative; Elizabeth Dragon representing Commissioner Shawn LaTourette of the Department of Environmental Protection; and Public Members Philip Alagia and Robert Shimko, First Alternate Public Member.

Members of the Authority present via conference call: Chairman Kevin Quinn; State Treasurer Elizabeth Muoio of the Department of Treasury; Commissioner Marlene Caride of the Department of Banking and Insurance; Commissioner Robert Asaro-Angelo of the Department of Labor and Workforce Development; and Public Members Charles Sarlo, Vice Chairman; Virginia Bauer, Aisha Glover, and Marcia Marley.

Also present: 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: Public Members Fred Dumont 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 at the Department of State.

## **MINUTES OF AUTHORITY MEETING**

The next item of business was the approval of the December 21, 2022 meeting minutes. A motion was made to approve the minutes by Ms. Dragon, and seconded by Mr. Alagia, and was approved by the twelve (12) voting members present.

The next item of business was the approval of the December 21, 2022 Executive Session meeting minutes. A motion was made to approve the minutes by Commissioner Caride, and seconded by Ms. Bauer, and was approved by the twelve (12) voting members present.

The next item of business was the approval of the January 18, 2023 special meeting minutes. A motion was made to approve the minutes by Ms. Dragon, and seconded by Mr. Sarlo, and was approved by the twelve (12) 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.

## **WIND INSTITUTE**

### **ITEM: Wind Institute for Innovation and Training Grant Agreement – New Jersey Economic Development Authority (NJEDA) and New Jersey Department of the Treasury**

**REQUEST:** To approve a Grant Agreement between the New Jersey Economic Development Authority and the New Jersey Department of the Treasury that enables Treasury to provide funding to the NJEDA for administration, operations and program costs for the Wind Institute for Innovation and Training related programs.

**MOTION TO APPROVE:** Ms. Dragon      **SECOND:** Commissioner Angelo      **AYES: 12**  
**RESOLUTION ATTACHED AND MARKED EXHIBIT: 1**

### **ITEM: Wind Institute Fellowship Program for Public Universities**

**REQUEST:** To approve: (1) MOUs with similar terms with five (5) Public Universities to support student research in offshore wind via the Wind Institute Fellowship Program for the next two academic years; and (2) Utilization of funding for the NJ Wind Institute Fellowship program.

**MOTION TO APPROVE:** Commissioner Caride      **SECOND:** Mr. Alagia      **AYES: 12**  
**RESOLUTION ATTACHED AND MARKED EXHIBIT: 2**

### **ITEM: Wind Institute Fellowship Program for Private Research Universities**

**REQUEST:** To approve: (1) The creation of the Wind Institute Fellowship Program for Private Research Universities, a grant program that will enable students at New Jersey private, public-mission universities to participate in the Wind Institute Fellowship Program for next two academic years; (2) Utilization of funding for the Wind Institute Fellowship Program for Private Research Universities; and (3) Delegation of authority to the CEO to approve applications from universities in accordance with the terms of the program specifications and enter into grant agreements with awarded applicants.

**MOTION TO APPROVE:** Mr. Shimko      **SECOND:** Ms. Bauer      **AYES: 12**  
**RESOLUTION ATTACHED AND MARKED EXHIBIT: 3**

## **CLEAN ENERGY**

### **ITEM: Modification to the SSBCI Clean Energy Business Financing Program, “New Jersey Clean Energy Loans” (NJ CELs)**

**REQUEST:** To approve the modifications to the Clean Energy Business Financing Program “New Jersey Clean Energy Loans” (NJ CELs), regarding the definition of “Private Lenders.”

**MOTION TO APPROVE:** Ms. Giblin      **SECOND:** Ms. Marley      **AYES: 12**  
**RESOLUTION ATTACHED AND MARKED EXHIBIT: 4**

## **COMMUNITY DEVELOPMENT**

### **ITEM: New Jersey Indoor (NJ) Amusement Park Grant Program**

**REQUEST:** To approve: (1) The creation and specifications of a pilot grant program called the “NJ Indoor Amusement Park Grant,” to make grant funding available to for-profit establishments that operate indoor amusement parks, arcades and entertainment facilities, and demonstrate a minimum 50 percent reduction in indoor gross revenue for the 12-month period beginning April 1, 2019; (2) The utilization of funds from the Fiscal Year 2023 Appropriations Act for “Recovery Grants to Indoor Amusement Parks,” and (3) Delegation of authority to the CEO to approve applications for the NJ Amusement Park Grant Program.

**MOTION TO APPROVE:** Mr. Alagia                      **SECOND:** Ms. Bauer                      **AYES: 12**  
**RESOLUTION ATTACHED AND MARKED EXHIBIT: 5**

### **ITEM: Award of New Jersey Asset Activation Planning Grants**

**REQUEST:** To approve the award of New Jersey Asset Activation Planning Grants consistent with the parameters of the program.

**MOTION TO APPROVE:** Ms. Dragon                      **SECOND:** Mr. Alagia                      **AYES: 12**  
**RESOLUTION ATTACHED AND MARKED EXHIBIT: 6**

### **ITEM: Recommendation for Additional Funding for the Main Street Micro Business Loan**

**REQUEST:** To approve the utilization of funds from the Fiscal Year 2022 Appropriations Act to supplement the Main Street Micro Business Loan, and the use of funds from the appropriation to support the NJEDA costs to administer this additional funding.

**MOTION TO APPROVE:** Ms. Glover                      **SECOND:** Ms. Marley                      **AYES: 12**  
**RESOLUTION ATTACHED AND MARKED EXHIBIT: 7**

## **INCENTIVES**

### **ASPIRE**

### **ITEM: Policy for Measuring Economic Benefit of Transformative Commercial Projects. Amendment to Net Benefit Test Requirement for Transformative Commercial Projects**

**REQUEST:** To approve a change to the Authority’s approach to measuring the net positive economic benefits (NPEB) of Transformative Commercial Projects under the Authority’s Aspire program.

**MOTION TO APPROVE:** Ms. Dragon                      **SECOND:** Ms. Bauer                      **AYES: 12**  
**RESOLUTION ATTACHED AND MARKED EXHIBIT: 8**

### **ITEM: Aspire Program- Product #305785**

#### **NJ Innovation Associates Urban Renewal LLC (“Applicant”)**

**REQUEST:** To approve the application of NJ Innovation Associates Urban Renewal LLC (“Applicant”), located in New Brunswick, NJ, for the Transformative Project for the issuance of tax credits to the Aspire program of the Authority as set forth in the New Jersey Economic Recovery Act of 2020 (“ERA”), P.L. 2020, c. 156, as amended by P.L. 2021 c.160 and P.L. 2022, c.46 (N.J.S.A. 34:1B-322, et seq).

**MOTION TO APPROVE:** Mr. Shimko                      **SECOND:** Mr. Alagia                      **AYES: 12**  
**RESOLUTION ATTACHED AND MARKED EXHIBIT: 9**

## **GROW NJ**

**ITEM: Just Greens, LLC dba Aerofarms Grow New Jersey Assistance Program (“Grow NJ”) Modification P#39142 (PROD-00171803)**

**REQUEST:** To approve the increase in square footage of the Qualified Business Facility (“QBF”) from 46,099 to 71,280 (a 35% change).

**MOTION TO APPROVE:** Ms. Dragon      **SECOND:** Ms. Giblin      **AYES: 11**  
**RESOLUTION ATTACHED AND MARKED EXHIBIT: 10**

Ms. Glover abstained because Audible has a financial interest in the company through Newark Venture Partners (NVP).

## **GROW NJ COVID-RELATED TERMINATIONS**

**ITEM: LI 2000, Inc. d/b/a Century 21 Department Stores, LLC**  
**Grow New Jersey Assistance Program (“Grow NJ”) – COVID-Related Termination - P #39501 (PROD-00184629)**

**REQUEST:** To approve LI 2000, Inc. d/b/a Century 21 Department Stores (“LI 2000” or “Company”) request to terminate its Grow NJ Incentive Agreement retroactive to its 2020 tax year pursuant to the COVID-Related Relief provisions of the New Jersey Economic Recovery Act of 2020 (ERA), P.L.2020, c. 156, as amended by P.L. 2022, c. 134.

**MOTION TO APPROVE:** Ms. Bauer      **SECOND:** Mr. Alagia      **AYES: 12**  
**RESOLUTION ATTACHED AND MARKED EXHIBIT: 11**

## **GROW NJ APPEAL**

**ITEM: Maestri d’Italia Inc. - Hearing Officer’s Recommendation on the Appeal of the Application for Grow New Jersey Assistance Program**  
***THIS ITEM HAS BEEN WITHHELD FROM CONSIDERATION***

## **BONDS**

**ITEM: Adoption of Written Post-Issuance Compliance Procedures with Respect to the Authority’s Biomedical Research Facilities Bonds - PROD-00149843 REQUEST:**

To adopt Written Post-Issuance Compliance Procedures with respect to the Authority’s Biomedical Research Facilities Bonds and any Refunding Bonds; appoint one or more Tax Compliance Officers; and approve the use of professionals and authorize any and all necessary actions incidental to the adoption and implementation of the Written Procedures, subject to final review and approval of terms and documentation by Bond Counsel and the Attorney General's Office.

**MOTION TO APPROVE:** Mr. Shimko      **SECOND:** Commissioner Caride      **AYES: 12**  
**RESOLUTION ATTACHED AND MARKED EXHIBIT: 12**

## **AUTHORITY MATTERS**

### **ITEM: 2021 Comprehensive Annual Report**

**REQUEST:** To approve the Authority's comprehensive annual report for 2021, as required under N.J.S.A. 4:1B-4 and Executive Order No. 37 (2006).

**MOTION TO APPROVE:** Ms. Dragon

**SECOND:** Ms. Bauer

**AYES: 12**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 13**

### **ITEM: Amended Administrative Rules - Authority Fee Rules**

**REQUEST:** To approve: (1) the amended administrative rules regarding Authority fees and authorize staff to submit the amended fee rules to the Office of Administrative Law for publication in the New Jersey Register, subject to final review and approval by the Office of the Attorney General, the Governor's Rules Office, and the Office of Administrative Law; and (2) authorize staff to submit the amended fee rules to the Office of Administrative Law for final adoption in the event no substantive comments are received during the 60-day Office of Administrative Law comment period, subject to final review and approval by the Office of the Attorney General, the Governor's Rules Office, and the Office of Administrative Law.

**MOTION TO APPROVE:** Ms. Giblin

**SECOND:** Ms. Bauer

**AYES: 12**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 14**

### **ITEM: Memorandum of Understanding with New Jersey Institute of Technology**

**REQUEST:** To approve: (1) The transfer of funds from NJEDA to the New Jersey Institute of Technology (NJIT) to fund a new part-time Executive Director position at the New Jersey Big Data Alliance; (2) use of funds for an administrative fee to support the administration of the program; (3) an MOU between the NJEDA and the NJIT to memorialize the terms of the agreement.

**MOTION TO APPROVE:** Ms. Bauer

**SECOND:** Mr. Alagia

**AYES: 12**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 15**

### **ITEM: Updates to Delegation of Authority – Real Estate Development, NJ Accelerate, and NJ Energy Resilience Bank**

**REQUEST:** To approve updates to delegations of authority and revisions to existing delegations of authority.

**MOTION TO APPROVE:** Ms. Bauer

**SECOND:** Ms. Giblin

**AYES: 12**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 16**

### **ITEM: Special Counsel: Executive Order 52 (Murphy 2019), Attorney General Investigation, Holtec and Other Legal Actions**

**REQUEST:** To approve a contract extension and additional contract funding.

**MOTION TO APPROVE:** Ms. Dragon

**SECOND:** Mr. Alagia

**AYES: 12**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 17**

## **BOARD MEMORANDA**

### **FYI ONLY**

- Credit Underwriting Projects Approved Under Delegated Authority – December 2022 and January 2023
- Post-Closing Delegated Authority Bond Modification Approvals for 4th Quarter 2022
- Post-Closing Incentives Delegated Authority Memo, 4<sup>th</sup> Quarter, 2022
- Real Estate Division Delegated Authority for Leases and Right of Entry (ROE)/Licenses for 4<sup>th</sup> Quarter, 2022
- Hazardous Discharge Site Remediation Fund (HDSRF) Applications Approved Under Delegated Authority, 4<sup>th</sup> Quarter, 2022
- Petroleum Underground Storage Tank Applications (PUST) Approved Under Delegated Authority, 4<sup>th</sup> Quarter, 2022

### **PUBLIC COMMENT**

There was no public comment.

There being no further business, on a motion by Mr. Quinn, and seconded by Ms. Dragon, the meeting was adjourned at 11:36 am.

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



Danielle Esser, Director  
Governance & Strategic Initiatives  
Assistant Secretary



## MEMORANDUM

**To:** Members of the Authority

**From:** Tim Sullivan

**Date:** March 8, 2023

**Re:** March 2023 Board Meeting – CEO Report

Kevin Quinn has been an exceptional Chair and I deeply appreciate his service to the New Jersey Economic Development Authority (NJEDA). Kevin has been Chair during an extraordinary few years and has faced the challenges created by the pandemic with a sense of urgency, empathy, and practicality. He has been a remarkable leader and his wisdom has helped to reshape the NJEDA to better meet the needs of the state's business community. He has overseen the investment of hundreds of millions of dollars in our communities, worked to bolster the offshore wind, film, and life sciences industries, and ensured that small businesses across the state are supported. He has played a critical role in paving an economic foundation that will benefit New Jerseyans for generations to come. I wish him much success in his new role in the Biden administration.

I'm delighted to welcome Terry O'Toole as Chair and look forward to building on the work we've done in the past few years. With Terry's vast experience, the NJEDA is well-positioned to advance Governor Murphy's bold economic agenda and ensure New Jersey remains the number one state to live, work, and raise a family.

Last week, I had the honor of attending Governor Murphy's 2024 Budget Address, where he outlined a proposal that puts affordability and fiscal responsibility at the forefront. I'm excited that the Governor's budget proposal includes significant funding that will help the NJEDA pursue greater opportunities to serve New Jersey families, communities, and businesses.

Governor Murphy has proposed investing over \$50 million to grow the green economy, including \$40 million for the Green Fund, which will help reduce greenhouse gas emissions and promote an inclusive clean energy economy by accelerating the deployment of proven clean energy technologies. With this funding, we'll be able to expand our electric vehicle infrastructure and move our building stock from fossil fuels to energy-efficient heating and cooling technologies. Making this critical investment in our green economy will put us on track to achieve 100 percent clean energy by 2035.

The FY2024 budget includes allocating \$50 million to boost the Main Street Recovery Program, which will continue to help support the growth and success of small businesses across the state. The proposal also includes the creation of the Urban Investment Fund, which would create programs that support the arts, increased pedestrian safety, new open space, and funding to reimagine under-utilized office space. Dedicated funding for our urban centers will help attract new residents, small businesses and large corporations, and workers returning to the office. We must invest to help our Main Streets and downtowns recover from the economic hit they took during the pandemic and these programs will pave the way for a stronger economy.

The Governor also included \$50 million to support the Strategic Innovation Centers program, which supports transformative projects, such as the HAX headquarters in Newark and HELIX in New Brunswick. The budget allocates \$20 million to support Fort Monmouth, which will help the shuttered base improve its infrastructure and ready itself for redevelopment projects, like the planned Netflix production studios. The



proposal also includes \$20 million for manufacturing initiatives, which will help build and strengthen our state economy.

Governor Murphy has also proposed additional investment in Nurture NJ to end racial disparities and make New Jersey the gold standard in maternal and infant health care nationwide. And with the recommendation of the Wealth Disparity Task Force, the Governor is seeking to include \$6 million to incentivize businesses to convert to employee ownership. Expanding employee ownership will increase productivity, strengthen the middle class, and increase the wealth of minority workers, helping close the racial wealth gap.

On the investment front, we recently issued Notices of Investment Opportunities (NIOs) seeking experienced investment managers to manage and deploy a combined \$150 million of capital through four unique funds. Using federal and state monies, the NJEDA will create the Socially & Economically Disadvantaged Individuals (SEDI) Seed Fund, the Black and Latino Seed Fund, the Blended Capital Fund, and the Life Science/Healthcare Fund. Injecting capital into several high-wage, high growth sectors will help strengthen New Jersey's business environment and create opportunities for small business owners and entrepreneurs.

This afternoon the final application for the New Jersey Manufacturing Voucher Program will be available. The NJMVP will help manufacturers procure equipment they need to become more efficient and productive. Tomorrow the cannabis Eligibility Assessment Tool will launch and will help startups determine if they qualify for Phase I of the Cannabis Equity Grant Program. And later this month, the application for the New Jersey Innovation Fellows program, which will level the playing field for first-time entrepreneurs in underrepresented groups, will also launch.

Lastly, in light of Women's History Month, I'd like to recognize all the incredible women on our Board and staff who help advance our mission of growing and creating a more equitable state economy. And I'm proud of the work the NJEDA does to support women across all sectors of our economy. We must continue investing in women – their businesses, their communities, and their families – to create a stronger, fairer New Jersey.

A handwritten signature in black ink, appearing to read "Tim Sullivan", is positioned above a horizontal line.

Tim Sullivan, CEO



## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** March 8, 2023

**SUBJECT:** Final Adoption of the New Jersey Innovation Evergreen Program Rules, N.J.A.C. 19:31-25.1 et seq.

### **Request**

The Members are asked to approve:

The submission of Notice of Final Adoption of the New Jersey Innovation Evergreen Program Rules, N.J.A.C. 19:31-25.1 et seq., to the Office of Administrative Law (OAL) for publication in the New Jersey Register as final adopted rules. The specially adopted and concurrently proposed rules were published for public comment in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., on April 29, 2022. No public comments were received. Staff is recommending that the rules be filed with OAL for publication as final adopted rules with agency-initiated non-substantial amendments as described in this memorandum.

### **Initial Board Approval of the New Jersey Innovation Evergreen – Specially Adopted and Concurrently Proposed New Program Rules**

On April 19, 2022, the Board approved specially adopted and concurrently proposed new rules for the New Jersey Innovation Evergreen Program, and authorized staff to:

- a. Create the New Jersey Innovation Evergreen Program, a tax credit and investment program authorized by the New Jersey Economic Recovery Act of 2020, establishing the New Jersey Innovation Evergreen Act (Act), sections 20 through 34 of P.L. 2020, c. 156 as amended by P.L. 2021, c. 160 (N.J.S.A. 34:1B-288, et seq.), to foster collaborative engagement among established corporations that will purchase tax credits and commit strategic value to the New Jersey innovation economy, venture capital firms that will invest the funds raised, and the innovative, early-stage businesses that will receive the funds in the form of investment;
- b. Submit the specially adopted and concurrently proposed new program rules to OAL for publication in the New Jersey Register; and
- c. Submit Notice of Adoption of the specially adopted and concurrently proposed new program rules as final adopted rules to the OAL for publication in the New Jersey Register if no formal comments were received, subject to final review and approval by the Office of the Attorney General and the Office of Administrative Law.

## **Public Comment Period**

The new rules became effective on April 29, 2022, upon acceptance for filing by the Office of Administrative Law. The specially adopted new rules are effective for a period not to exceed 180 days from the date of filing, that is, until October 26, 2022, pursuant to the Act. N.J.S.A. 34:1B-302. The specially adopted new rules were also concurrently proposed for adoption in accordance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., which extended the expiration date by 180 days to April 24, 2023. N.J.S.A. 52:14B-5.1.c. The concurrently proposed new rules will become final adopted rules upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-6.4(f)), if filed on or before April 24, 2023.

No comments were received during the comment period, which ended on August 20, 2022. The Authority is proposing agency-initiated non-substantial amendments to the rules upon final adoption. N.J.A.C. 19:31-25.4 (Sale of tax credits) has been clarified to set forth that an individual with authority to execute and bind the tax credit purchaser to the tax credit purchaser contract may certify on behalf of a tax credit purchaser that: (1) the potential tax credit purchaser is in substantial good standing or, if a compliance issue exists, has entered into an agreement with the Department of Labor and Workforce Development, the Department of Environmental Protection, or the Department of the Treasury, as appropriate, in accordance with N.J.A.C. 19:31-25.7(e); (2) the officer has reviewed the tax credit bid application information submitted and the information contained in the application is true and accurate under penalty of perjury.

The erroneous term “incentive award agreement” has been revised with the correct term of “tax credit purchaser contract” at N.J.A.C. 19:31-25.10(b). N.J.A.C. 19:31-25.10(j) has been corrected to revise the erroneous term “incentive award” with the correct term “qualified business side.” The erroneous citation to N.J.A.C. 19:30-3.2 in N.J.A.C. 19:31-25.11 has been corrected to properly cite N.J.A.C. 19:30-4. The title of N.J.A.C. 19:31-25.12 “Fees” has been revised to the clearer “Program fees.”

## **Anticipated Rule Finalization Schedule**

Approval of the submission of the Notice of Final Adoption of the specially adopted and concurrently proposed New Jersey Innovation Evergreen Fund Rules by the Board would permit NJEDA to submit to OAL ahead of the April 24, 2023 expiration. The rules will become final upon publication.

## **Program Interest to Date**

The purpose of the Program is to increase venture capital funding available to the State’s innovation ecosystem and create the conditions necessary for entrepreneurs to succeed. The Act authorizes the Authority to sell up to \$300 million of Corporation Business Tax (CBT) credits over the next five years through a series of competitive auctions, proceeds of which are to be deposited in the Evergreen Fund to be used for Program investments.

As of the date of this memorandum, the Authority successfully completed the Program’s first tax credit auction, which was approved by the Board of the Authority on December 21, 2022.

The inaugural tax credit auction saw demand for \$62.3 million of CBT credits, and the Authority approved the sale of \$50 million of CBT credits to eight tax credit purchasers for an aggregate purchase price of \$41.1 million, and strategic commitment proposals with an aggregate value of \$3.8 million. The Program also opened its rolling application period for investors to be certified as Qualified Venture Firms on December 16, 2022, and the Authority has received 5 applications from investors to be certified as Qualified Ventures Firms for the Program as of the time of the writing of this memorandum. The applications for Qualified Venture Firms are currently under review by Authority staff. The application for Qualified Investments is scheduled to open in early 2023.

### **Recommendation**

The Members are asked to approve:

The submission of Notice of Final Adoption of the New Jersey Innovation Evergreen Program Rules, N.J.A.C. 19:31-25.1 et seq., to the Office of Administrative Law (OAL) for publication in the New Jersey Register as final adopted rules. The specially adopted and concurrently proposed rules were published for public comment in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., on April 29, 2022. No public comments were received. Staff is recommending that the rules be filed with OAL for publication as final adopted rules with agency-initiated non-substantial amendments as described in this memorandum.



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Tim Sullivan, CEO

Prepared by: Alexander Pachman – Manager Venture Programs  
Tim Rollender – Director Venture Programs

Attachment: Appendix A – Notice of Final Adoption of the New Jersey Innovation  
Evergreen Program Rules

**Appendix A - Notice of Final Adoption of the New Jersey Innovation  
Evergreen Program Rules**

**OTHER AGENCIES**

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

**Notice of Adoption**

**Authority Assistance Programs**

**Evergreen**

**Adopted New Rules: N.J.A.C. 19:31-25.1 through 25.16**

Proposed: June 20, 2022, at 54 N.J.R. 1185(a).

Adopted: \_\_\_\_\_, 2022, by the New Jersey Economic Development Authority, Tim Sullivan, Chief Executive Officer.

Filed: \_\_\_\_\_, 2022, as R.2022 d.\_\_\_\_, with non-substantial changes not requiring additional notice or public comment (see N.J.A.C. 1:30-6.3).

Authority: P.L. 2020, c. 156; P.L. 2021, c. 160.

Effective Date: April 29, 2022.

Expiration Date: \_\_\_\_\_, 2027.

**Take Notice** that the New Jersey Economic Development Authority (“NJEDA” or “Authority”) proposed rules implementing the Innovation Evergreen Act pursuant to sections 20 through 34 of P.L. 2020, c. 156, as amended by P.L. 2021, c. 160. The public comment period ended August 20, 2022.

**Summary of Public Comments and Agency Responses:**

**No public comments were received.**

### **Summary of Agency-Initiated Changes:**

The previous rulemaking requires the following corrections and clarifications: N.J.A.C. 19:31-25.4 (Sale of tax credits) has been clarified to set forth that an individual with authority to execute and bind the tax credit purchaser to the tax credit purchaser contract may certify on behalf of a tax credit purchaser that: (1) the potential tax credit purchaser is in substantial good standing or, if a compliance issue exists, has entered into an agreement with the Department of Labor and Workforce Development, the Department of Environmental Protection, or the Department of the Treasury, as appropriate, in accordance with N.J.A.C. 19:31-25.7(e); (2) the officer has reviewed the tax credit bid application information submitted and the information contained in the application is true and accurate under penalty of perjury.

The erroneous term “incentive award agreement” has been revised with the correct term of “tax credit purchaser contract” at N.J.A.C. 19:31-25.10(b). N.J.A.C. 19:31-25.10(j) has been corrected to revise the erroneous term “incentive award” with the correct term “qualified business side.” The erroneous citation to N.J.A.C. 19:30-3.2 in N.J.A.C. 19:31-25.11 has been corrected to properly cite N.J.A.C. 19:30-4. The title of N.J.A.C. 19:31-25.12 “Fees” has been revised to the clearer “Program fees.”

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

#### 19:31-25.4 Sale of tax credits

(a)-(d) No change.

(e) To be considered for an award of a tax credit under the program, a potential tax credit purchaser shall submit a tax credit bid application, which shall include the following information in an application format prescribed by the Authority:

1-12 No change.

13. 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 potential tax credit purchaser 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 potential tax credit purchaser shall also submit a written certification by [the chief executive officer, or equivalent officer for North American operations,] **an individual with authority to execute and bind the tax credit purchaser to the tax credit purchaser contract**, stating that the potential tax credit purchaser satisfies the criteria at N.J.A.C. 19:31-25.7(e) to be in substantial good standing, or if a compliance issue exists, has entered into an agreement, with the respective department within the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury;

14. No change.

15. A certification by [the chief executive officer, or equivalent officer for North American operations,] **an individual with authority to execute and bind the tax credit purchaser to the tax credit purchaser contract**, of the potential tax credit purchaser that the officer has reviewed the tax credit bid application information submitted and that the information contained in the application is true and accurate under penalty of perjury; and

16. No change.

(f)-(m) No change.

## 19:31-25.10 Recapture, decertification, and redemption

(a) No change.

(b) If, at any time, the Authority determines that a tax credit purchaser made a material misrepresentation on the tax credit purchaser's tax credit bid application or any submissions to the Authority under this program, the Authority may recapture any or all of all tax credits awarded under the program, which shall be in addition to any other remedies in the [incentive award agreement] **tax credit purchaser contract** and any criminal or civil penalties to which the tax credit purchaser and the respective officer may be subject. Any 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 amount, 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.

(c) – (i) No change.

(j) If, at any time, the Authority determines that a qualified business made a material misrepresentation on the qualified venture firm's application for certification, application for a qualified investment, annual report, or any submissions to the Authority under this program, the Authority may determine not to make any follow-on investments or may demand a redemption as set forth at (h) above. The actions by the Authority pursuant to this subsection shall be in addition to any other remedies in the [incentive award] **qualified business side** agreement and any criminal or civil penalties to which the qualified business and the respective officer may be subject.

(k) No change.

N.J.A.C. 19:31-25.11 Affirmative action and prevailing wage

The Authority's affirmative action requirements at N.J.S.A. 34:1B-5.4 and N.J.A.C. 19:30-3 and the prevailing wage requirements at N.J.S.A. 34:1B-5.1 and N.J.A.C. 19:30-[3.2]**4** shall apply only to the management fees and direct expenses received by the qualified venture firm.

N.J.A.C. 19:31-25.12 **Program Fees**

(a) – (b) No change.

**Federal Standards Statement**

A Federal standards analysis is not required because the adopted new rules are not subject to any Federal requirements or standards.

## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Tim Sullivan, Chief Executive Officer

**DATE:** March 8, 2023

**SUBJECT:** Offshore Wind Submerged Arc Welding Memorandum of Understanding (MOU) – New Jersey Economic Development Authority (NJEDA) and Camden County Technical Schools (CCTS) and Camden County College (CCC)

### Request

The Members are requested to approve:

1. Memorandum of Understanding (MOU) between New Jersey Economic Development Authority (NJEDA) and Camden County Technical Schools (CCTS) that will enable NJEDA to provide \$207,738 in funding to CCTS to support expansion of their submerged arc welding program. This expanded program will prepare secondary students for jobs in heavy steel offshore wind component manufacturing.
2. MOU between NJEDA and Camden County College (CCC) that will enable NJEDA to provide \$99,670 in funding to CCC to support expansion of their submerged arc welding program. This expanded program will prepare post-secondary students and workers for jobs in heavy steel offshore wind component manufacturing.
3. Utilization of \$307,408 in funding for these two MOUs from the \$10 million allocated via the October 27, 2022 MOU between NJEDA and the New Jersey Board of Public Utilities (NJBP) for offshore wind initiatives.

The proposed MOUs each have a term of twenty-four (24) months. Members are also requested to provide delegated authority to the CEO to extend the MOU by up to twelve (12) months if needed.

The full texts of the MOUs are attached as Exhibits A and B of this memorandum.

### 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 occupations for the offshore wind industry in New Jersey, particularly for EEW's forthcoming monopile fabrication facility, represent an opportunity to realize these priorities. NJEDA is currently supporting the launch of the Wind Institute for Innovation and Training 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. The hiring of specialized workers began in 2022 and continues as operations increase. 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 welding<sup>1</sup>); these skillsets would also be required for offshore wind tower manufacturing, an emerging industry in the U.S. offshore wind sector. These skills will also prepare students for jobs in other manufacturing facilities, including potentially at the New Jersey Wind Port.

To build a talent pipeline for offshore wind component manufacturing, NJEDA entered into MOUs with Gloucester County Institute of Technology (GCIT) in December 2021 and Salem County Vocational Technical School in (SCVTS) in April 2022 to support the expansion of the schools' welding and painting programs through the integration of specialized equipment and curriculum. GCIT's programs began in the Summer of 2022 and EEW has already hired several graduates from the program. SCVTS's program will launch in Summer 2023. NJEDA now seeks to enter into a similar set of MOUs with CCTS and CCC to provide expanded welding training opportunities for residents in Camden and the surrounding area. Through these MOUs, NJEDA would help fund equipment, materials, instructor professional development, scholarships, and other program related expenses required to train secondary and post-secondary students for the specific skills required for large scale turbine component manufacturing. These MOUs utilize funding from the \$10 million allocated via the MOU between NJEDA and the NJBPU for offshore wind initiatives dated October 27, 2022.

Technical education in Camden County is provided through CCTS and CCC, with CCTS providing training and education for secondary students and CCC providing training and education for post-secondary students. CCTS has campuses in both Pennsauken and Sicklerville, New Jersey. Both campuses have welding career program areas that currently support an enrollment of up to 40 high school students at each location. CCC currently utilizes the Sicklerville location for their adult training programs in the evening with an average annual enrollment of 20 students in the welding career track. Both CCTS and CCC have a long-standing partnership collaborating to provide opportunities at the secondary and post-secondary level to residents in Camden County to meet the workforce development needs of the region.

EDA will coordinate shared curriculum development between CCTS, CCC, SCVTS and GCIT, with input from EEW and other industry stakeholders, to support a regional pipeline of trained residents for offshore wind component manufacturing employment.

### **MOU Description**

The MOUs with CCTS and CCC will provide funding to support expansion of their welding programs to prepare students for specialized positions in monopile fabrication and other large-scale manufacturing.

The MOU with CCTS will provide \$207,738 to CCTS to cover the following:

- Equipment and materials for welding programs
- Marketing and promotional materials
- Professional development and installation time for welding instructors
- Scholarships to provide affordable and accessible training
- Other related costs to support the delivery of welding training

The MOU with CCC will provide \$99,670 to cover the following:

- Materials for welding programs
- Marketing and promotional materials
- Professional development and installation time for welding instructors

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<sup>1</sup> 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.

- Scholarships to provide affordable and accessible training
- Other related costs to support the delivery of welding training

Both MOUs have a term of 24 months and both schools must submit final reports documenting the use of funds within 24 months of the executed date of the MOU. Any unutilized funds must be returned to NJEDA within 24 months of the executed date of the MOU.

### **Recommendation**

It is the recommendation of Authority staff that the Members approve:

1. Memorandum of Understanding (MOU) between New Jersey Economic Development Authority (NJEDA) and Camden County Technical Schools (CCTS) that will enable NJEDA to provide up to \$207,738 in funding to CCTS to support expansion of their submerged arc welding program. This expanded program will prepare secondary students for jobs in heavy steel offshore wind component manufacturing.
2. MOU between NJEDA and Camden County College (CCC) that will enable NJEDA to provide up to \$99,670 in funding to CCC to support expansion of their submerged arc welding program. This expanded program will prepare post-secondary students and workers for jobs in heavy steel offshore wind component manufacturing.
3. Utilization of up to \$307,408 in funding for these two MOUs from the \$10 million allocated via the October 27, 2022 MOU between NJEDA and the New Jersey Board of Public Utilities (NJBPU) for offshore wind initiatives.
4. Delegated authority to the CEO to extend each MOU by up to twelve (12) months if needed.



---

Tim Sullivan, CEO

Prepared by: Cathy Yuhas

### **Attachments**

Exhibit A – Memorandum of Understanding Between New Jersey Economic Development Authority and Camden County Technical Schools

Exhibit B - Memorandum of Understanding Between New Jersey Economic Development Authority and Camden County College

**Exhibit A**

**MEMORANDUM OF UNDERSTANDING**

THIS MEMORANDUM OF UNDERSTANDING ("MOU"), made as of this day of \_\_\_\_\_, 2023 (the "Effective Date"), is between the NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY ("EDA") and the Camden County Technical Schools ("CCTS"), (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 the New Jersey Department of the 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 Governor's WIND Council recommended the creation of an independent authority to coordinate and advance offshore wind workforce, education, research, and innovation efforts now referred to as the Wind Institute for Innovation and Training (Wind Institute); and

WHEREAS, the EDA has a role in supporting the development of the offshore wind industry in the State of New Jersey; and

WHEREAS, the EDA is undertaking actions in support of the offshore wind industry until the Wind Institute is established via an act of the Legislature; and

WHEREAS, the EDA has determined that specialized training will be required to meet skillset needs for welding (known as submerged arc welding) 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 CCTS's welding program for monopile and other large scale steel component manufacturing; and

WHEREAS, CCTS is a public vocational technical school located in Camden County that provides technical education in welding, among other programs; and

WHEREAS, N.J.S.A. 52:14-1 et seq. authorizes state agencies to enter agreements to provide assistance to each other.

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

1. CCTS will undertake the following activities:

- a. Embed into the existing CCTS high school welding curriculum content and lessons to train secondary students to be able to pursue career opportunities in sub-arc welding.
- b. Establish an afterschool welding career program at both the Pennsauken and Sicklerville Campuses of CCTS to train senior level high school students in Camden County with basic welding, sub-arc welding, and other related skills.
- c. Purchase sub-arc welding equipment and related supplies/materials for both campuses of CCTS to support related training for both secondary and post-secondary students.
- d. Develop scholarship opportunities to provide affordable, afterschool welding training opportunities.
- e. Develop support services, pre-apprentice opportunities, job placement, 'workplace readiness skill' development, and other services for secondary students in the welding career areas.
- f. Develop a recruitment and marketing program/campaign to recruit students from middle school into the high school program and high school students from other secondary schools in Camden County for the afterschool program.
- g. Develop activities to promote retention of enrolled students in the secondary program.
- h. Utilize funding to expand its welding program to support the specialized training and skills required by the offshore wind industry as detailed in Appendix A.
- i. Track and report the use of funding from EDA and ensure resources only go toward related welding equipment, materials, instructor professional development, scholarships, and other program related expenses. An interim report shall be submitted by 12 months following the execution of this MOU. A final report shall be executed no later than 24 months following the execution of this MOU. If the MOU is extended, the due date for the final report should be submitted by the end of the extension.

2. The EDA will undertake the following activities:

- a. Provide \$207,738 in funding to support related equipment, materials, instructor professional development, marketing, and other program related expenses, including scholarships or other means to provide affordable and accessible training.
- b. 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 CCTS. This MOU becomes effective immediately upon full execution and shall remain in effect for twenty-four (24) 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 program expansion. 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 or CCTS upon 60 days prior written notice to the other. There are no third-party beneficiaries of this MOU.
5. This MOU shall not be assignable, except for EDA's ability to partner and/or assign their responsibilities to the Wind Institute upon its statutory establishment.
6. 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.
7. All notices, demands or communications to any party to this MOU shall be sent to the addresses set forth below or as may be otherwise modified in writing:

EDA: Jen Becker, Vice President Offshore Wind  
36 West State Street, PO Box 990  
Trenton, NJ 08625  
[jbecker@njeda.com](mailto:jbecker@njeda.com)

CCTS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN WITNESS HEREOF, EDA and CCTS have executed this MOU on the dates below. The Parties agree to accept electronic signatures.

For CCTS:

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For EDA:

Name: Tim Sullivan

Signature: \_\_\_\_\_

Title: Chief Executive Officer

Date: \_\_\_\_\_

**Proposal to the New Jersey Economic Development Authority  
Sub-Arc Welding Training Program August 12, 2022**

***Revised: March 2, 2023***

**Executive Summary**

Camden County Technical Schools and Camden County College propose to integrate into their respective welding career programs at the secondary and post-secondary levels sub-arc welding training and skill development. In addition, Camden County College will also provide customized training to existing prospective adult students who are currently working in a related field seeking enhanced skills in sub-arc welding. Both institutions, collaboratively, are pursuing funding from the New Jersey Economic Development Authority to support the acquisition of equipment, startup supplies, and other related expenses to establish this training program to meet current regional workforce needs in this sector.

**Background**

In March 2021, the EEW Group announced the groundbreaking for the first US offshore wind manufacturing facility. EEW American Offshore Structures (EEW AOS) will be located at the Paulsboro Marine Terminal in Gloucester County, New Jersey. The facility will create approximately 260 jobs in the first development and manufacturing phase. This will start in 2023 with the production of monopoles (MPs) for the Ocean Wind 1 project of Ørsted and PSEG. In the second and full build out phase, more than 500 highly-skilled employees will produce the world largest foundations required to support the increasing wind turbine capacities in the future. (<https://eew-group.com/locations/eew-aos/>)

Camden County Technical Schools (CCTS) has campuses in both Pennsauken and Sicklerville, New Jersey. Both campuses have welding career program areas that currently support an enrollment of up to 40 high school students at each location. Camden County College (CCC) currently utilizes the Sicklerville location for their adult training programs in the evening with an average annual enrollment of 20 students in the welding career track. It would be the intention of CCC, with support from CCTS, to offer incumbent worker training to companies and individuals looking to upskill by means of taking the Sub-Arc Welding program, beginning with the Fall 2023 semester at the CCTS Pennsauken location. CCTS has also allocated \$2.8 million dollars to build a new, 'state of the art' welding career building at its Pennsauken Campus estimated to be constructed over the next two years.

Part of the mission statement of CCTS states, "The Camden County Technical School District is dedicated to student success through college and career readiness in an ever-changing world environment." (ccts.org) Similarly, the CCC vision states, "Camden County College will be the regional leader in the provision of innovative academic and workforce training pathways to best serve our community." (camdencc.edu) Both CCTS and CCC have a long-standing partnership collaborating to provide opportunities at the secondary and post-secondary level to residents in Camden County to meet the workforce development needs of our region. As shown in the vision statements, as well as embedded in their missions, both institutions are committed to meeting these evolving and ongoing career and technical skills.

## **Proposal**

CCTS and CCC propose the following:

1. To meet the emerging workforce needs and labor demand in the welding and other related manufacturing jobs, as created with the EEW AOS Off Shore Wind Manufacturing Facility project in Paulsboro, New Jersey:
  - a. Embed into the existing CCTS high school welding curriculum content and lessons to train secondary students to be able to pursue career opportunities in sub-arc welding.
  - b. Embed into the existing CCC Career and Technical Institute welding curriculum content and lessons to train postsecondary students to be able to pursue career opportunities in sub-arc welding.
  - c. Establish an afterschool welding career program at both the Pennsauken and Sicklerville Campuses of CCTS to train senior level high school students in Camden County with basic welding, sub-arc welding, and other related skills.
  - d. Purchase sub-arc welding equipment and related supplies/materials for both campuses of CCTS to support related training for both secondary and post- secondary students.
  - e. Develop scholarship opportunities and support services (ex: CCC's participation in the New Jersey Pay It Forward program) for post-secondary students to encourage out of work individuals, non-traditional populations, economically disadvantage groups, and other individuals requiring assistance to gain access to training and employment opportunities in sub-arc welding.
  - f. Develop support services, pre-apprentice opportunities, job placement, 'workplace readiness skill' development, and other services for secondary students in the welding career areas.
  - g. Develop support services, apprentice opportunities, job placement, 'workplace readiness skill' development, and other services for postsecondary students in the welding career areas.
  - h. Develop a recruitment and marketing program/campaign to recruit students from middle school into the high school career programs.
  - i. Develop a recruitment and marketing program/campaign to recruit students from high school and adult populations into the postsecondary career programs.
  - j. Develop activities to promote retention of enrolled students in the secondary and post-secondary programs.

**CCTS Budget**

QUANTITY	ITEM	UNIT COST	BUDGETED
	<b><u>Start Up Supplies</u></b>		
525	Plate Coupon-A36 Carbon Steel 18"X3 1/4"X1"	\$ 50.00	\$ 26,250.00
525	Backing-A36 Carbon steel 3/8"X22"X3	20.00	10,500.00
30	Spool of 5/32" welding wire	300.00	9,000.00
90	50lb bag of flux	88.00	7,920.00
	<b><u>Equipment</u></b>		
2	Sub-Arc Welding Trainers (with Flux Recovery Unit) Locations: Pennsauken Campus (1), Gloucester Township Campus (1)	57,034.00	114,068.00
	<b><u>Other/Misc.</u></b>		
1	Marketing / Recruitment Materials	10,000.00	10,000.00
	<b><u>Other/Misc.</u></b>		-
5	Scholarships	4,000.00	20,000.00
1	Misc. PPE, Safety Equipment, Supplies for 20 students @ \$500.00 Each.	10,000.00	10,000.00
		<b>TOTAL</b>	<b>\$ 207,738.00</b>

**CCC Budget**

QUANTITY	ITEM	UNIT COST	BUDGETED
	<b><u>Start Up Supplies</u></b>		
525	Plate Coupon-A36 Carbon Steel 18"X3 1/4"X1"	\$ 50.00	\$ 26,250.00
525	Backing-A36 Carbon steel 3/8"X22"X3	20.00	10,500.00
30	Spool of 5/32" welding wire	300.00	9,000.00
90	50lb bag of flux	88.00	7,920.00
			-
	<b><u>Other/Misc.</u></b>		-
1	Marketing / Recruitment Materials	10,000.00	10,000.00
1	Professional Development / Installation Assistance (Price Confirmed by Lincoln)	6,000.00	6,000.00
	<b><u>Other/Misc.</u></b>		-
5	Scholarships @ \$2000 per student	4,000.00	20,000.00
1	Misc. PPE, Safety Equipment, Supplies for 20 students @ \$500.00 Each.	10,000.00	10,000.00
		<b>TOTAL</b>	<b>\$99,670.00</b>

**Exhibit B**

**MEMORANDUM OF UNDERSTANDING**

THIS MEMORANDUM OF UNDERSTANDING ("MOU"), made as of this day of 2023 (the "Effective Date"), is between the NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY ("EDA") and the Camden County College ("CCC"), (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 the New Jersey Department of the 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 Governor's WIND Council recommended the creation of an independent authority to coordinate and advance offshore wind workforce, education, research, and innovation efforts now referred to as the Wind Institute for Innovation and Training (Wind Institute); and

WHEREAS, the EDA has a role in supporting the development of the offshore wind industry in the State of New Jersey; and

WHEREAS, the EDA is undertaking actions in support of the offshore wind industry until the Wind Institute is established via an act of the Legislature; and

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

WHEREAS, CCC is a public county college located in Camden County that provides technical education in training, among other programs; and

WHEREAS, it is in the best interest of the Parties to enter into this MOU regarding the provision of EDA support of CCC's welding program for monopile and other large-scale steel component manufacturing; and

WHEREAS, N.J.S.A. 52:14-1 et seq. authorizes state agencies to enter agreements to provide assistance to each other.

WHEREAS, Camden County College seeks to have its training programs serve the needs of

the local community, provide for its students employment, and assisting developing earth friendly futuristic technologies that contribute to the health of the planet;

NOW, THEREFORE, the Parties, in order to effectively and efficiently carry out their respective goals, declare their intention as follows:

1. CCC will undertake the following activities:
  - a. Embed into the existing CCC Career and Technical Institute welding curriculum content and lessons to train postsecondary students to be able to pursue career opportunities in sub-arc welding.
  - b. Purchase sub-arc related supplies/materials for both campuses of CCTS to support related training for both secondary and post-secondary students enrolled within the adult evening program and/or an incumbent worker or customized training program.
  - c. Develop scholarship opportunities and support services for post-secondary students to encourage out of work individuals, non-traditional populations, economically disadvantage groups, and other individuals requiring assistance to gain access to training and employment opportunities in sub-arc welding.
  - d. Develop support services, apprentice opportunities, job placement, 'workplace readiness skill' development, and other services for postsecondary students in the welding career areas.
  - e. Develop a recruitment and marketing program/campaign to recruit students from high school and adult populations into the postsecondary career programs.
  - f. Develop activities to promote retention of enrolled students in the post-secondary program.
  - g. Utilize funding to expand its welding program to support the specialized training and skills required by the offshore wind industry as detailed in Appendix A.
  - h. Track and report the use of funding from EDA and ensure resources only go toward related welding equipment, materials, instructor professional development, scholarships, and other program related expenses. An interim report shall be submitted by 12 months following the execution of this MOU. A final report shall be executed no later than 24 months following the execution of this MOU. If the MOU is extended, the due date for the final report should be submitted by the end of the extension.

2. The EDA will undertake the following activities:
  - a. Provide \$99,670 in funding to support related equipment, materials, instructor professional development, marketing, and other program related expenses, including scholarships or other means to provide affordable and accessible training.
  - b. 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 CCC. This MOU becomes effective immediately upon execution and shall remain in effect for twenty-four (24) 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 program expansion. 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 or CCC upon 60 days prior written notice to the other. There are no third-party beneficiaries of this MOU.
5. This MOU shall not be assignable, except for the NJEDA's ability to partner and/or assign their responsibilities to the Wind Institute upon its statutory establishment.
6. 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.
7. All notices, demands or communications to any party to this MOU shall be sent to the addresses set forth below or as may be otherwise modified in writing:

EDA: Jen Becker, Vice President Offshore Wind  
36 West State Street, PO Box 990  
Trenton, NJ 08625  
[jbecker@njeda.com](mailto:jbecker@njeda.com)

CCC: Dr. Lovell Pugh-Bassett  
President  
Camden County College  
P.O. Box 200  
Blackwood, NJ 08012

IN WITNESS HEREOF, EDA and CCC have executed this MOU on the dates below. The Parties agree to accept electronic signatures.

For CCC:

Name: Dr. Lovell Pugh-Bassett

Signature: \_\_\_\_\_

Title: President

Date: \_\_\_\_\_

For EDA:

Name: Tim Sullivan

Signature: \_\_\_\_\_

Title: Chief Executive Officer

Date: \_\_\_\_\_

## Appendix A: Proposal to the New Jersey Economic Development Authority Sub-Arc Welding Training Program

### **Proposal to the New Jersey Economic Development Authority Sub-Arc Welding Training Program August 12, 2022**

*Revised: March 2, 2023*

#### **Executive Summary**

Camden County Technical Schools and Camden County College propose to integrate into their respective welding career programs at the secondary and post-secondary levels sub-arc welding training and skill development. In addition, Camden County College will also provide customized training to existing prospective adult students who are currently working in a related field seeking enhanced skills in sub-arc welding. Both institutions, collaboratively, are pursuing funding from the New Jersey Economic Development Authority to support the acquisition of equipment, startup supplies, and other related expenses to establish this training program to meet current regional workforce needs in this sector.

#### **Background**

In March 2021, the EEW Group announced the groundbreaking for the first US offshore wind manufacturing facility. EEW American Offshore Structures (EEW AOS) will be located at the Paulsboro Marine Terminal in Gloucester County, New Jersey. The facility will create approximately 260 jobs in the first development and manufacturing phase. This will start in 2023 with the production of monopoles (MPs) for the Ocean Wind 1 project of Ørsted and PSEG. In the second and full build out phase, more than 500 highly-skilled employees will produce the world largest foundations required to support the increasing wind turbine capacities in the future. (<https://eew-group.com/locations/eew-aos/>)

Camden County Technical Schools (CCTS) has campuses in both Pennsauken and Sicklerville, New Jersey. Both campuses have welding career program areas that currently support an enrollment of up to 40 high school students at each location. Camden County College (CCC) currently utilizes the Sicklerville location for their adult training programs in the evening with an average annual enrollment of 20 students in the welding career track. It would be the intention of CCC, with support from CCTS, to offer incumbent worker training to companies and individuals looking to upskill by means of taking the Sub-Arc Welding program, beginning with the Fall 2023 semester at the CCTS Pennsauken location. CCTS has also allocated \$2.8 million dollars to build a new, 'state of the art' welding career building at its Pennsauken Campus estimated to be constructed over the next two years.

Part of the mission statement of CCTS states, "The Camden County Technical School District is dedicated to student success through college and career readiness in an ever-changing world environment." (ccts.org) Similarly, the CCC vision states, "Camden County College will be the regional leader in the provision of innovative academic and workforce training pathways to best serve our community." (camdencc.edu) Both CCTS and CCC have a long-standing partnership collaborating to provide opportunities at the secondary and post-secondary level to residents in

Camden County to meet the workforce development needs of our region. As shown in the vision statements, as well as embedded in their missions, both institutions are committed to meeting these evolving and ongoing career and technical skills.

### **Proposal**

CCTS and CCC propose the following:

1. To meet the emerging workforce needs and labor demand in the welding and other related manufacturing jobs, as created with the EEW AOS Off Shore Wind Manufacturing Facility project in Paulsboro, New Jersey:
  - a. Embed into the existing CCTS high school welding curriculum content and lessons to train secondary students to be able to pursue career opportunities in sub-arc welding.
  - b. Embed into the existing CCC Career and Technical Institute welding curriculum content and lessons to train postsecondary students to be able to pursue career opportunities in sub-arc welding.
  - c. Establish an afterschool welding career program at both the Pennsauken and Sicklerville Campuses of CCTS to train senior level high school students in Camden County with basic welding, sub-arc welding, and other related skills.
  - d. Purchase sub-arc welding equipment and related supplies/materials for both campuses of CCTS to support related training for both secondary and post- secondary students.
  - e. Develop scholarship opportunities and support services (ex: CCC's participation in the New Jersey Pay It Forward program) for post-secondary students to encourage out of work individuals, non-traditional populations, economically disadvantage groups, and other individuals requiring assistance to gain access to training and employment opportunities in sub-arc welding.
  - f. Develop support services, pre-apprentice opportunities, job placement, 'workplace readiness skill' development, and other services for secondary students in the welding career areas.
  - g. Develop support services, apprentice opportunities, job placement, 'workplace readiness skill' development, and other services for postsecondary students in the welding career areas.
  - h. Develop a recruitment and marketing program/campaign to recruit students from middle school into the high school career programs.
  - i. Develop a recruitment and marketing program/campaign to recruit students from high school and adult populations into the postsecondary career programs.
  - j. Develop activities to promote retention of enrolled students in the secondary and post-secondary programs.

**CCTS Budget**

QUANTITY	ITEM	UNIT COST	BUDGETED
	<b><u>Start Up Supplies</u></b>		
525	Plate Coupon-A36 Carbon Steel 18"X3 1/4"X1"	\$ 50.00	\$ 26,250.00
525	Backing-A36 Carbon steel 3/8"X22"X3	20.00	10,500.00
30	Spool of 5/32" welding wire	300.00	9,000.00
90	50lb bag of flux	88.00	7,920.00
	<b><u>Equipment</u></b>		
2	Sub-Arc Welding Trainers (with Flux Recovery Unit) Locations: Pennsauken Campus (1), Gloucester Township Campus (1)	57,034.00	114,068.00
	<b><u>Other/Misc.</u></b>		
1	Marketing / Recruitment Materials	10,000.00	10,000.00
	<b><u>Other/Misc.</u></b>		-
5	Scholarships	4,000.00	20,000.00
1	Misc. PPE, Safety Equipment, Supplies for 20 students @ \$500.00 Each.	10,000.00	10,000.00
	<b>TOTAL</b>		<b>\$ 207,738.00</b>

**CCC Budget**

QUANTITY	ITEM	UNIT COST	BUDGETED
	<b><u>Start Up Supplies</u></b>		
525	Plate Coupon-A36 Carbon Steel 18"X3 1/4"X1"	\$ 50.00	\$ 26,250.00
525	Backing-A36 Carbon steel 3/8"X22"X3	20.00	10,500.00
30	Spool of 5/32" welding wire	300.00	9,000.00
90	50lb bag of flux	88.00	7,920.00
			-
	<b><u>Other/Misc.</u></b>		-
1	Marketing / Recruitment Materials	10,000.00	10,000.00
1	Professional Development / Installation Assistance (Price Confirmed by Lincoln)	6,000.00	6,000.00
	<b><u>Other/Misc.</u></b>		-
5	Scholarships @ \$2000 per student	4,000.00	20,000.00
1	Misc. PPE, Safety Equipment, Supplies for 20 students @ \$500.00 Each.	10,000.00	10,000.00
	<b>TOTAL</b>		<b>\$99,670.00</b>



## **MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** March 8, 2023

**RE:** Memorandum of Understanding with the Capital City Redevelopment Corporation

### **Request**

The Members are asked to approve a Memorandum of Understanding (“MOU”) between the New Jersey Economic Development Authority (“Authority” or “NJEDA”) and the CCRC as an inter-department governmental agreement confirming the mutual understanding and intention between the agencies with respect to the provision of the Authority’s support services to the CCRC. This MOU was approved by the CCRC at its Annual Board of Directors meeting on February 21, 2023.

### **Background**

CCRC was created in 1987 as an instrumentality of the State pursuant to N.J.S.A. 52:9Q-9 et seq to plan, coordinate, and promote the public and private development within a Capital District defined in the CCRC Act, consisting of those portions of the city of Trenton that serve as the commercial center of the community and in which public buildings and historic sites are located. CCRC is governed by a Board of Directors consisting of the Commissioner of Community Affairs, the Commissioner of Transportation, the State Treasurer, and the Mayor of the City of Trenton, all ex-officio, and seven public members, four of whom are appointed by the Mayor of the City of Trenton and three of whom are appointed by the Governor. CCRC has redevelopment powers, including the authority to manage redevelopment projects and act as a municipal redevelopment entity or redeveloper for the City of Trenton, as well as limited bonding authority in support of economic development.

The original MOU regarding support services between the CCRC and the Authority was executed in 2014 and has been renewed by mutual consent annually whereby the Authority provides staff support services to the CCRC. In 2022, the CCRC Board approved an updated version of the MOU with substantially similar terms. The Members are requested to extend the MOU for another one-year term as provided by the terms of the agreement.

In recognition of the Authority's capacity and interest in the revitalization of Trenton and the synergy created by Governor Murphy's Executive Order 40 that established the New Jersey State Capital Partnership to support the revitalization and economic development of the City of Trenton, the Authority will continue to provide support services as outlined in the attached MOU as the Corporation currently has no dedicated full-time staff. In particular, the Authority will provide staff and administrative services in support of CCRC including but not limited to board governance, public information, and Board support; legal services through the Attorney General's office; and policy and development assistance.

The Authority will work with CCRC and the City of Trenton to support specific project development. In these efforts, the Authority will partner with additional state and county agencies and other stakeholders in support of the overall revitalization of the Capital District. Future transactional real estate activity may result in fee for service work, as agreed to by the parties, and consistent with how the Authority's Real Estate Division customarily charges for its assistance.

Staff and administrative services in support of the CCRC will be primarily provided by the NJEDA Governance Team.

The MOU shall remain in effect for one year and may be extended for one year upon mutual consent indefinitely and will become effective upon execution by both parties.

### **Recommendation**

The Board Members' consent is requested to execute a Memorandum of Understanding between the Authority and CCRC confirming the mutual understanding and intention between the agencies with respect to the provision of the Authority's support services to CCRC.



---

Tim Sullivan, CEO

Prepared by: Danielle Esser

Attachment

**MEMORANDUM OF UNDERSTANDING BETWEEN  
THE CAPITAL CITY REDEVELOPMENT CORPORATION  
AND THE NEW JERSEY ECONOMIC DEVELOPMENT  
AUTHORITY**

This Memorandum of Understanding (MOU), made as of DATE, will confirm the mutual understanding and intention between the Capital City Redevelopment Corporation ("CCRC") and the New Jersey Economic Development Authority ("NJEDA", and collectively, CCRC and NJEDA are referred to as the "Parties") as to the following:

**WHEREAS**, CCRC was created pursuant to N.J.S.A. 52:9Q-9 et seq. (the "CCRC Act") to plan, coordinate, and promote the public and private development within a capital district defined in the CCRC Act, consisting of those portions of the city of Trenton that serve as the commercial center of the community and in which public buildings and historic sites are located; and

**WHEREAS**, NJEDA was created pursuant to N.J.S.A. 34:1B-1 et seq. to issue tax exempt and taxable bonds, make direct loans and guarantees, operate a real estate development program, among other things, for the purpose of promoting employment and increasing tax ratables in the State of New Jersey (the "State"); and

**WHEREAS**, in support of the purposes of CCRC and in an effort to assist CCRC, NJEDA will provide office staff and support services required to carry out the policies set forth by CCRC; and

**WHEREAS**, NJEDA staff has expertise in financial analysis, loan review, loan closing, real estate project development, marketing services and other related activities necessary to CCRC carrying out its mission; and

**WHEREAS**, NJEDA staff has provided loan review, closing, and post-closing services from time to time to CCRC; and

**WHEREAS**, it is in the best interest of the Parties to enter into this MOU regarding the provision of NJEDA staff and administrative services in support of CCRC; and

**WHEREAS**, it is CCRC's intent to continue its existing MOU with the State Department of the Treasury ("Treasury") under which Treasury provides accounting and financial reporting support to CCRC including, but not limited to procurement of an independent auditor and necessary insurance; and

**WHEREAS**, the Parties enter into this MOU as an inter-department governmental agreement pursuant to N.J.S.A. 52:14-1 et seq.

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

1. NJEDA will make available on an as-needed basis NJEDA staff who will utilize a portion of their time as follows:
  - a. Carrying out the policies and directions of CCRC with respect to activities for which CCRC has statutory authority, including, but not limited to, undertaking activities as a municipal redevelopment entity or redeveloper, and
  - b. Providing administrative and support services to meet the needs of CCRC, including but not limited to, corporate governance and public information support services such as CCRC Board meeting support, liaison with Governor's Office and Authority's Unit, records custodian and assistance with Open Public Records Act information requests, guidance on ethics matters and liaison with State Ethics Commission, media outreach and management, and legislative support.
2. As part of the services provided by NJEDA in paragraph 1 above, in addition to any Deputy Attorney General assigned to CCRC, NJEDA will provide legal services to CCRC from NJEDA-assigned Deputy Attorneys General.
3. NJEDA agrees to provide written reports as needed, and upon request, to the CCRC Board detailing any staff services provided for in paragraph 1 above. Both Parties anticipate that the CCRC Board will meet on a bi-monthly basis unless more frequent meetings become necessary.
4. It is the intent of the Parties that CCRC will not compensate NJEDA for the costs incurred on behalf of CCRC for the services provided for in paragraph 1.b. above. Any compensation for NJEDA for the costs incurred on behalf of CCRC for the services provided for in paragraph 1.a will be mutually agreed upon in writing before beginning the activity. When NJEDA assists CCRC in undertaking real estate and/or project related work, it is understood and agreed that NJEDA shall be reimbursed for costs incurred including but not limited to title searches, insurance, marketing, appraisals, environmental studies, other required consultants or professionals, and legal costs as well as for NJEDA's administrative fees for managing the project related work and compliance with project related obligations.
5. NJEDA will cooperate with Treasury's accounting and financial reporting support for CCRC, including, but not limited to, completing all necessary audits of CCRC.
6. Staff services set forth in paragraph 1 will be conducted from NJEDA's main or satellite offices or as otherwise allowed by NJEDA policy for NJEDA personnel.

7. NJEDA will make available conference room(s) at NJEDA's main or satellite offices for regular and special meetings of the CCRC Board and will provide conference room space at NJEDA's main or satellite offices so that CCRC Board members may transact the business of CCRC.
8. NJEDA will identify a NJEDA staff who will be the primary contact staff for the public and the CCRC Board regarding CCRC matters.
9. The CCRC Board, as constituted by statute, will continue to function as the exclusive entity empowered to make discretionary decisions for CCRC, including the selection of independent auditors, except as delegated from time to time.
10. All expenses related to the Capital City Redevelopment Loan and Grant Fund and all other assets carried on the CCRC balance sheet will be paid for by CCRC and will be reflected in CCRC's financial statements.
11. Nothing in this MOU shall be construed as providing NJEDA an exclusive right to support CCRC and CCRC shall have the ability to seek these services from any other government entity, including but not limited to the New Jersey Department of the Treasury.
12. This MOU shall not take effect unless approved by the Boards of the NJEDA and CCRC and executed by the authorized representatives of NJEDA and CCRC. This MOU becomes effective immediately upon execution by all parties and shall remain in effect for one (1) year, unless terminated sooner pursuant to Section 13 below. This MOU may subsequently be extended for one year at a time upon mutual written consent of the Parties.
13. The Parties are entering into this MOU for the sole purpose of evidencing the mutual understanding and intention of the Parties with respect to the provision of NJEDA support services to CCRC. 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 the Board of either Party upon 60 days prior written notice to the other. There are no third-party beneficiaries of this MOU.
14. 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.
15. All notices, demands or communications to any party to this MOU shall be sent to the addresses set forth below or as may be otherwise modified in writing:

NJEDA: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CCRC: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

16. This MOU may be signed in counterparts, which, when taken as a whole, shall constitute one and the same document.

**IN WITNESS HEREOF**, NJEDA and CCRC have executed this MOU on the dates below:

For the New Jersey Economic Development Authority:

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

For the Capital City Redevelopment Corporation:

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** March 8, 2023

**Subject:** Dedication of Funds toward Commission on Science, Innovation and Technology for Food and Agriculture Research and Development Grant Program

### **Summary:**

The Members of the Board are asked to approve:

1. Transfer of \$750,000 from New Jersey Economic Development Authority's ("EDA" or "Authority") Fiscal Year 2022 (FY2022) Appropriations Act ("Act") for "Food and Agriculture Innovation" toward grants made through the Commission on Science, Innovation, and Technology's ("CSIT") new Food and Agriculture Research & Development Grant Program.
2. A Memorandum of Understanding ("MOU"), attached hereto as Exhibit A, with CSIT to utilize funds to implement the new Food and Agriculture Research & Development Pilot Grant Program.

### **Background**

In 2021, Governor Phil Murphy signed the New Jersey Economic Recovery Act of 2020, P.L. 2020, c.156 (ERA) into law. One of the programs established under the ERA is the Food Desert Relief Act (FDRA), which directs the Authority to address the food security needs of communities across New Jersey by identifying and implementing ways to increase access to nutritious foods and develop new approaches to alleviate food deserts.

As the Authority works on regulations that allow for the rollout of programs under the FDRA, the State has appropriated \$3,500,000 to the Authority for "Food and Agriculture Innovation" from the FY22 Appropriations Act. CSIT's proposed Food and Agriculture Research and Development (R&D) Pilot Grant Program would utilize \$750,000 of this appropriation to identify urgent challenges and the research needed to develop solutions that address food access in the state.

Separately, on December 21, 2022 the Board approved the utilization of \$2,600,000 from this funding source for the Food Retail Innovation in Delivery Grant ("FRIDG").

## **NJEDA-CSIT Memorandum of Understanding**

In June 2019, the Members approved a Memorandum of Understanding (MOU) with CSIT, effective in July 2019. EDA provided support to CSIT during its earliest re-formation years to better coordinate and ramp-up market programs to innovation community stakeholders in the State. These activities complement the Authority's Technology and Life Science activities and support the goals of the Governor's strategic plan for economic development.

Since 2019, EDA and CSIT have collaborated on multiple initiatives, including, but not limited to:

- Research with NJ
- Clean Tech Research & Development Voucher Program
- Clean Tech Seed Grant Program
- Maternal and Infant Health R&D Grant Program

With NJEDA's unique connections to the private and public sectors and our dedication to innovation, the new Food and Agriculture R&D Pilot Grant Program will advance investment in a critical area of research and development that intersects with the Governor's economic development plan and improves food access and food security across the state of NJ.

### **CSIT Food and Agriculture R&D Pilot Grant Program**

The development of the Food and Agriculture R&D Pilot Grant Program represents a key strategy for the EDA to advance the innovation economy in this critical area of research. As the Authority seeks to deepen its impact on improving food access and food security across the 50 Food Desert Communities (FDCs) and more broadly across the state of New Jersey, innovation and commercialization in the food and agriculture space in partnership with CSIT will help advance some of the goals.

The collaboration will aim to help eligible early-stage innovation-based companies accelerate R&D of technologies to transform new discoveries from research stage into commercially viable products and services as it relates to food and agriculture with the aim of improving food security. Businesses will need to meet the eligibility criteria to participate in this pilot program. For example, at minimum, an applicant must include 1 FTE employee with one individual working half time on the project and 50% of staff hours in NJ. Food and agriculture systems are very complex and require collaboration, coordination, and thoughtful implementation. The grant funds will support the R&D of technologies, products, and services that enhance the quality of food access in the state of New Jersey. Projects do not need to be located within an FDC, but applicants should describe how their proposal will impact FDC residents and food insecure New Jerseyans more broadly.

The Program is for companies conducting R&D or testing technologies in the following target sectors:

- Life Sciences (e.g., Next Generation Crop, Soil Health, indoor agriculture, and aquaculture)
- Technology (e.g., Digital services and platform development for improved food access, digital services to reduce food waste, digital platform to access emergency food and other services necessary for food security)
- Food and Beverage (Non-retail) (e.g., Improved connection between urban food systems and rural and urban communities to improve food access, increased capacity, and distribution of farm fresh products)

- Transportation and Logistics (e.g., online platform designed to facilitate business-to-business connections with local food systems to address disruptions to the local food supply, innovative food delivery models with reduced carbon footprint)

The Board is requested to approve an MOU with CSIT to utilize \$750,000 of funding from the FY22 Act for “Food and Agriculture Innovation”, currently housed in EDA’s Economic Development Fund. This funding is anticipated to be used to make 10 grants of up to \$75,000 each.

### **Recommendation**

The Members of the Board are asked to approve:

1. Transfer of \$750,000 from New Jersey Economic Development Authority’s (“EDA” or “Authority”) Fiscal Year 2022 (FY2022) Appropriations Act (“Act”) for “Food and Agriculture Innovation” toward grants made through the Commission on Science, Innovation, and Technology’s (“CSIT”) new Food and Agriculture Research & Development Grant Program.
2. A Memorandum of Understanding (“MOU”), attached hereto as Exhibit A, with CSIT to utilize funds to implement the new Food and Agriculture Research & Development Pilot Grant Program.



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Tim Sullivan, CEO

Prepared by: Rucha Gadre, Senior Advisor, Food Security & Innovations

Attachments:

Attachment A –Memorandum of Understanding for CSIT Food and Agriculture R&D Pilot Grant Program

Attachment A

FOOD AND AGRICULTURE RESEARCH AND DEVELOPMENT PILOT GRANT PROGRAM

MEMORANDUM OF UNDERSTANDING  
BETWEEN THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY AND  
COMMISSION ON SCIENCE, INNOVATION, AND TECHNOLOGY

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made this [redacted] day of [redacted], 2023 by and between the New Jersey Economic Development Authority (“NJEDA”) and the New Jersey Commission on Science, Innovation and Technology (“NJ CSIT”), instrumentalities of the State of New Jersey (the “State”). The NJEDA and NJ CSIT may sometimes hereafter be collectively referred to as the “Parties” and individually as a “Party.”

WHEREAS, P.L. 2022, c. 133 appropriated to the NJEDA three million, five hundred thousand dollars for Food and Agricultural Innovation (“FY22 Appropriated Funds”); and

WHEREAS, NJEDA is taking steps to address food insecurity across New Jersey while investing in the food and agriculture innovation ecosystem to advance the state’s food security goals; and

WHEREAS, NJ CSIT and NJEDA are developing a Food and Agriculture Research & Development (“R&D”) Pilot Grant Program (“Program”) to provide grants to eligible early-stage innovation-based companies that will accelerate research and development of technologies to transform new discoveries from research stage into commercially viable products and services for improved food security; and

WHEREAS, NJEDA desires to transfer \$750,000 of the FY2022 Appropriated Funds to NJ CSIT for the purpose of launching and implementing the Program; and

WHEREAS, N.J.S.A. 52:14-1 et seq. authorizes state agencies to enter into agreements to provide assistance to each other.

NOW, THEREFORE, it is agreed between NJEDA and NJ CSIT:

1. DUTIES OF THE PARTIES: To achieve the goals of this MOU, the Parties hereby agree as follows:
  - a. NJEDA will transfer to NJ CSIT \$750,000 (“Program Funds”) from the FY2022 Appropriated Funds upon execution of this MOU.
  - b. NJEDA will provide support services for the Program pursuant to the existing Memorandum of Understanding between the parties, first effective on July 2, 2019, and most recently amended June 2, 2022 (“Support MOU”).
  - c. NJ CSIT will administer the Program according to the program specifications attached hereto as Appendix A.
  - d. NJEDA will not charge NJ CSIT the 5% administrative fee set forth in the Support MOU to implement this Program, since funding comes directly from NJEDA’s budget.
  - e. NJ CSIT will utilize Program Funds to provide awards under the Program based on the Program specifications to be approved by the Board of NJ CSIT with input provided by NJEDA. The target date for launch of the Program is 2Q2023.
  - f. NJEDA staff will serve as scoring committee members for the Program.

- g. Upon making Program awards, NJ CSIT will timely provide a list of grantees with a summary of projects to the NJEDA.
2. **TERM:** This MOU shall not take effect unless approved by the Boards of the NJEDA and NJCSIT and executed by the authorized representatives of NJEDA and NJCSIT. This MOU becomes effective on the date it is fully executed by both Parties, and shall remain in effect for four (4) years, unless terminated sooner pursuant to Paragraph 8 below.
  3. **SUBJECT TO THE AVAILABILITY OF FUNDING:** The funding that NJEDA will provide under this MOU is subject to the availability of FY2022 Appropriated Funds.
  4. **THIRD-PARTY BENEFICIARIES:** This MOU shall not create in any individual or entity the status of a third-party beneficiary and nothing in this MOU shall be construed to create such status.
  5. **ASSIGNMENT:** This MOU shall not be assignable and shall bind and inure to the benefit of the Parties hereto and their respective successors.
  6. **DISPUTE:** If there are any disputes among the Parties concerning this MOU, the Executive Director of NJ CSIT and the CEO of NJEDA, or their authorized representatives, shall confer to resolve the dispute.
  7. **AMENDMENT:** The Parties are entering into this MOU for the sole purpose of evidencing the mutual understanding and intention of the Parties with respect to creation and implementation of the Program. It may be amended, modified, and supplemented at any time by mutual consent and in writing signed by the undersigned or their designees.
  8. **TERMINATION:** Either party may terminate this MOU upon service on the other party of written notice giving at least 90 days written notice of such intention to terminate. In the event of termination, the Parties agree to conduct a final accounting within 90 days of the termination effective date.
  9. **NOTICE:** All correspondence and notices to NJ CSIT regarding this MOU shall be addressed to the following person or his/her delegate or replacement:

Judith Sheft  
Executive Director  
New Jersey Commission on Science, Innovation, and Technology  
One Gateway Center, Suite 1410, Newark, NJ 07102  
609-462-0560  
JSheft@njeda.com

All correspondence and notices to NJEDA regarding this MOU shall be addressed to the following person or his/her delegate or replacement:

Tara Colton  
Executive Vice President, Economic Security  
New Jersey Economic Development Authority  
One Gateway Center, Suite 1410, Newark, NJ 07102  
609-802-2510

TColton@njeda.com

10. The parties, both entities of the State of New Jersey, are each subject to the New Jersey Tort Claims Act and the New Jersey Tort Claims Fund. This MOU shall be subject to all the provisions of the New Jersey Tort Claims Act (N.J.S.A. 59:1-1 et seq.), the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1 et seq.). Therefore, the Parties agree that each entity shall be liable for its own conduct and any claims against it without indemnification from the other party.

IN WITNESS HEREOF, the Parties have executed this MOU as of the date first written above. The Parties agree to accept electronic signatures.

**For New Jersey Commission on Science, Innovation, and Technology:**

Name: Judith Sheft

Signature: \_\_\_\_\_

Title: Executive Director

**For New Jersey Economic Development Authority:**

Name: Tim Sullivan

Signature: \_\_\_\_\_

Title: Chief Executive Officer

**Appendix A**  
**Food and Agriculture Research & Development Pilot Grant Program**

<b>Funding Source</b>	<p>Total funding of \$750,000 for the Food and Agriculture Research &amp; Development Pilot Grant Program will come from New Jersey Economic Development Authority’s (“EDA” or “Authority”) Fiscal Year 2022 (FY2022) Appropriations Act (“Act”) for “Food and Agriculture Innovation.”</p> <p>Funding will be used to award grants made through the Commission on Science, Innovation, and Technology’s (“CSIT”) Food and Agriculture Research &amp; Development Grant Program.</p> <p>CSIT aims to fund 10 companies for awards of up to \$75,000 each.</p>
<b>Program Purpose</b>	<p>The goal of the Food and Agriculture Research &amp; Development Pilot Grant Program is to support innovation from researchers and entrepreneurs focused on developing technology and other solutions to address food insecurity in New Jersey. The grant will engage early-stage innovation-based companies in NJ to accelerate research and development of technologies to transform new discoveries from research stage into commercially viable products and services that address food security needs of communities across New Jersey by identifying and implementing ways to increase access to nutritious foods and develop new approaches to alleviate food deserts. The grant aims to support the development of innovative technologies within the target areas listed below.</p>
<b>Target Industries</b>	<p>The Food and Agriculture R&amp;D Pilot Grant Program is for companies conducting research and development or testing technologies in the following target areas:</p> <ul style="list-style-type: none"> <li>• Life Sciences (e.g., Next Generation Crop, Soil Health, indoor agriculture, and aquaculture)</li> <li>• Technology (e.g., Digital services and platform development for improved food access, digital services to reduce food waste, digital platform to access emergency food and other services necessary for food security)</li> <li>• Food and Beverage (Non-retail) (e.g., Improved connection between urban food systems and rural and urban communities to improve food access, increased capacity, and distribution of farm fresh products)</li> <li>• Transportation and Logistics (e.g., online platform designed to facilitate business-to-business connections with local food</li> </ul>

	systems to address disruptions to the local food supply, innovative food delivery models with reduced carbon footprint)
<b>Eligible Applicants</b>	<p>All applicants <b>must</b> meet the following eligibility criteria at the time of submission and throughout the application review period:</p> <ol style="list-style-type: none"> <li>Authorized and in good standing to conduct business in New Jersey as evidenced by a current New Jersey tax clearance certificate (listing New Jersey Commission on Science, Innovation and Technology). All certificates listing another state agency will be rejected.</li> <li>Have no more than 25 full-time equivalent workers (FTE calculated on a 35-hour work week) at time of application.</li> <li>Have a minimum of one (1) full-time worker (35 hours work week). A founder can be counted as a worker; a worker may be paid or unpaid.</li> <li>50% or more of the cumulative hours worked by all workers, founders, and contractors must be conducted in NJ (calculated on an FTE basis – 35 hrs. per week).</li> <li>Have less than or equal to one million dollars (\$1,000,000) in 2022 calendar year sales revenue.</li> </ol>
<b>Eligible Uses</b>	The grant funding can be utilized to maintain R&D activities in the Target Industries and cover general operating costs
<b>Ineligible Uses</b>	<p>The grant funding cannot be utilized for the following</p> <ul style="list-style-type: none"> <li>• Direct services</li> <li>• Manufacturing of products for sale or commercial use</li> <li>• Real estate rental expenses</li> <li>• Patient clinical trial expenses</li> <li>• Construction costs</li> <li>• Life Science - therapeutic drug development, medical devices</li> </ul>
<b>Application Process and Board Approval</b>	<p><b>Application process:</b></p> <ol style="list-style-type: none"> <li>Applications will be open for a limited timeframe</li> <li>A document completeness review will be done on a rolling basis as applications are received</li> <li>Applicants with missing documentation will be notified and given 10 business days to submit missing documents</li> <li>Only complete applications after the missing documentation deadline will be evaluated and scored (Applicants that can demonstrate they have attempted to obtain missing state documentation but have not received it will be scored. Missing documentation <b>MUST</b> be received prior to any recommendations of any award to any Applicant)</li> <li>An evaluation committee comprised of CSIT and NJEDA staff will review and assign a score to each application, after receiving qualitative input from Subject Matter Experts (SMEs). As part of the process, all Applicants with complete applications will be invited to make a brief</li> </ol>

	<p>presentation about their project and submit it to the evaluation committee and SME's.</p> <p>6. In order to be eligible for funding, an Applicant must receive a minimum score of 70 out of the available 100 points on the standard scoring criteria, before allocation of bonus points.</p> <p>Grants will be awarded to applicants with the highest overall scores, provided the minimum score is met, until program funds are expended.</p> <p><b>Board Approval:</b> The CSIT Program Committee will review scored applications and make funding recommendations to the CSIT board. The CSIT Board will make final decision on grant award winners.</p>
<b>Scoring criteria: (Based Upon Technical Proposal/Milestone and Budget Proposal)</b>	<ul style="list-style-type: none"> <li>• Innovation (up to 30 points)</li> <li>• Market Opportunity (up to 10 points)</li> <li>• Implementation Plan -Budget and Milestones (up to 20 points)</li> <li>• Go-to-Market strategy (up to 10 points)</li> <li>• Economic and Community Impact (up to 15 points)</li> <li>• Team (up to 15 points)</li> </ul>
<b>Bonus Points</b>	<ul style="list-style-type: none"> <li>• Company is using technology initially developed at a NJ university, under an executed License Agreement with such university (15 points)</li> <li>• NJ Certified women-owned business (10 points)</li> <li>• NJ Certified minority-owned business (10 points)</li> <li>• Primary place of business/R&amp;D located within an opportunity zone eligible census tract or Government restricted municipality (5 points)</li> </ul>
<b>Grant Amounts/Duration</b>	Eligible applicants can propose a project of up to one year in duration and with a maximum budget of \$75,000. An extension for up to an additional 3 months may be permitted at the sole discretion of CSIT.
<b>Cost</b>	There is no fee to apply



## **MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** March 8, 2023

**SUBJECT:** Recommendation for Utilization of Additional Funding for the NJ Manufacturing Voucher Program (NJ MVP)

### **Summary:**

The Members are asked to approve:

1. The utilization \$13.75 million from the Fiscal Year 2023 (FY2023) Appropriations Act ("Act") known as Manufacturing Industry Initiative, to fund eligible applications under the NJ Manufacturing Voucher Program (NJ MVP).
2. Delegation to the Chief Executive Officer to accept up to \$ 25 million in additional funds from any available governmental funding source (Federal, State or County/Municipal) to further fund this pilot program, and to impose additional requirements as may be required by law as a condition of accepting, provided that the requirements are consistent with the parameters of the program as approved on October 12, 2022.

### **Background:**

On June 30, 2022, Governor Murphy signed the Fiscal Year 2023 (FY2023) Appropriations Act ("Act") into law. The Act allocated significant State funding for numerous strategic economic development investments to support key industries, advance the innovation economy, continue to bolster recovery, and spur statewide growth. These strategic investments include, but are not limited to, **\$35 million for a Manufacturing Industry Initiative** to grow and strengthen the State's manufacturing sector, including programs to spur capital investment, increase the adoption of new technology, attract new suppliers to the state, and expand workforce development and training opportunities.

On October 12, 2022, the Members approved the creation of the New Jersey Manufacturing Voucher Program, which included the utilization of \$20 million of the available \$35 million from the Manufacturing Industry Initiative budget appropriation to stimulate private sector investments to modernize New Jersey's manufacturing industry.

NJMVP contains a two-step application process consisting of a pre-qualification and subsequent application. Based on pre-qualifications accepted between Dec 15, 2022 – Dec 22, 2022, the Authority has received funding requests under NJ MVP that represent over \$56 million.

Because demand exceeds the \$20 million in funding that the Members approved for this program, staff is requesting approval to use an additional \$13.75 million from the same \$35 million Manufacturing Industry Initiative appropriation to further fund any eligible applications under the NJ Manufacturing Voucher Program. If approved, this will increase the total funding utilized for NJ MVP from \$20 million to a total of \$33.75 million, allowing the program to assist a greater number of New Jersey manufacturers.

Because demand would still exceed available funding, even with the Members approval of these additional funds, staff is requesting delegated authority for the Chief Executive Officer to accept up to \$25 million of any additional governmental funding that may become available, and to impose additional requirements as may be required by law as a condition of accepting, provided that the requirements are consistent with the parameters of the program as approved on October 12, 2022. The \$25 million is the estimated maximum amount required to fully fund all eligible applications. Approval of this request will ensure that if additional funding does become available, staff can deploy those funds as efficiently as possible without further Board action required.

For the Members' reference, the NJ MVP product specifications as approved on October 12, 2022 are attached as Exhibit A.

**Recommendation:**

The Members are asked to approve:

1. The utilization \$13.75 million from the Fiscal Year 2023 (FY2023) Appropriations Act ("Act") known as Manufacturing Industry Initiative, to fund eligible applications under the NJ Manufacturing Voucher Program (NJ MVP).
2. Delegated authority to the Chief Executive Officer to accept up to \$25 million in additional funds from any available governmental funding source (Federal, State or County/Municipal) to further fund this pilot program, and to impose additional requirements as may be required by law as a condition of accepting, provided that the requirements are consistent with the parameters of the program as approved on October 12, 2022.



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Tim Sullivan, CEO

Prepared by: Ivan Mendez

Exhibit A – NJ Manufacturing Voucher Program –Product Specifications



## **MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** October 12, 2022

**SUBJECT:** NJ MVP, New Jersey Manufacturers Voucher Program.

### **Request:**

The Members are asked to approve:

1. The creation of the NJ MVP, New Jersey Manufacturing Voucher Program, a pilot program that will provide New Jersey Manufacturers a grant to access equipment they need to become more efficient, productive, and profitable.
2. The utilization of \$20,000,000 from the Fiscal Year 2023 (FY2023) Appropriations Act ("Act") to capitalize the NJ MVP, New Jersey Manufacturing Voucher Program. The utilization of \$1,000,000 of the \$20,000,000 funding is to be used by the Authority to cover administrative costs that are needed to administer the NJ MVP, New Jersey Manufacturing Voucher Program.
3. Delegation of authority to the Chief Executive Officer to approve certain individual applications for the NJ MVP, New Jersey Manufacturing Voucher Program, within the parameters set forth in this memo and the attached program specifications.

### **Background:**

On June 30, 2022, Governor Murphy signed the Fiscal Year 2023 (FY2023) Appropriations Act ("Act") into law. The Act allocates significant State funding for numerous strategic economic development investments to support key industries, advance the innovation economy, continue to bolster recovery, and spur statewide growth. These strategic investments include, but are not limited to, **\$35 million for a Manufacturing Industry Initiative** to grow and strengthen the State's manufacturing sector, including programs to spur capital investment, increase the adoption of new technology, attract new suppliers to the state, and expand workforce development and training opportunities. NJ MVP, New Jersey Manufacturing Voucher Program is utilizing \$20 million from that bucket to stimulate private sector investments to modernize New Jersey's manufacturing industry. To help keep pace with state-of-the art product development and manufacturing technology, the New Jersey Manufacturing Voucher Program provides New Jersey manufacturers with a grant to access equipment they need to become more efficient, productive, and profitable.

## **Program Details:**

NJ MVP – New Jersey Manufacturers Voucher Program will provide equipment grants sized at 30% – 50% of the cost of the eligible equipment (including installation) up to a maximum award amount of \$250,000. The program will target the State’s manufacturers within targeted industries that will purchase equipment that integrate advanced or innovative technologies, processes, and materials to improve the manufacturing of products. The program will also offer bonuses focused on certified woman, minority, veteran owned businesses (WMVB), opportunity zones, purchasing manufacturing equipment in New Jersey as well as bonuses for companies that has a collective bargaining agreement in place. NJ MVP is also committed to supporting small businesses by awarding manufacturers with under 100 Full Time Equivalents employees (FTE) higher award percentages. In addition, applications will be accepted on a rolling basis and remain open until all funds are committed.

### *Eligibility:*

The NJ MVP pilot program will provide funding for New Jersey Manufacturers who meet a set of eligibility criteria.

To be eligible:

- Applicant company must be in a targeted industry (list and definitions are included in Appendix B)
- Company must obtain a Tax Clearance Certificate
- Equipment must be located and installed at a New Jersey location
- Must provide Purchase Quote, Order Proforma, and / or Equipment Listing.
  - Projects where a contract has been signed, a Purchase Order placed, or a deposit made in advance of submitting an MVP application WILL NOT be considered for funding)
- For profit and not-for-profit companies are eligible but home-based businesses are ineligible
- New and/or used equipment is eligible.
- Equipment must be used in the manufacturing process. See Appendix A (Program Specs) below.
- Total aggregated project cost (equipment + installation) must be at least \$25,000.00
- All contracts (including manufactures/supplier agreements) that are \$2,000 or more and requires installation of equipment is subject to Prevailing Wage Law.

In addition to the eligibility parameters already stated above, the applicant must also be in substantial good standing with the New Jersey Department of Labor and Workforce Development (LWD) and NJ Department of Environmental Protection (DEP) at the time of approval to be eligible for NJ MVP – New Jersey Manufacturers Voucher Program. A current tax clearance will need to be provided prior to closing / grant agreement to demonstrate the applicant is properly registered to do business in New Jersey and in substantial good standing with the NJ Division of Taxation.

### *Targeted Industries:*

The Board on July 14th, 2021, approved the use of the Emerge Program list definitions and of Targeted Industries to help guide uses of Economic Recovery Fund (ERF) monies as required by the Economic Recovery Act of 2020 (ERA). The ERA provides a consistent definition of “Targeted Industry” for various programs and authorizes the Authority to amend the list from time to time. As part of the approval of the Emerge Program on May 12, 2021, the Board approved a policy with definitions for each of the Targeted Industries included in the statute, including providing examples of what activities and sub-sectors were included and excluded from each industry definition. Those definitions are attached to this memorandum.

These definitions are applicable as the appropriated monies for NJ MVP – New Jersey Manufacturers Voucher Program will be deposited into Economic Recovery Fund (ERF), as explained further below.

*Diversity, Equity, and Inclusion:*

As a commitment and in support of the Authority’s Diversity, Equity, and Inclusion efforts, the NJ MVP – New Jersey Manufacturers Voucher Program supports projects that are in distressed areas and under-represented ownership groups. In particular, the NJ MVP will award bonuses to those applicants for each of the following areas:

**Stackable 5% Bonuses Available for each of the following**

- Opportunity Zone Eligible Census Tract (equipment located)
- Certified Woman, Minority, and Veteran Owned Businesses (WMVB)
- At least one Collective Bargaining Agreement in place

**Stackable 10% Bonuses Available for the following**

- Purchase equipment from a New Jersey Manufacturer. (Equipment must be manufactured and/or assembled in NJ)

*Eligible Funding Uses:*

Funding can only be used for the purchase and installation of (new and/or used) equipment used in the manufacturing process. The equipment must be located and installed at a New Jersey location. Eligible capital assets shall include any form of manufacturing equipment, technologically advanced equipment or production/operating systems, including but not limited to robotics, additive manufacturing, hardware or software for digital twinning, advanced sensor or control systems, IIoT (interconnected sensors, instruments, and other devices networked together with computers' industrial applications) systems and related security. In addition, for profit and not-for-profit companies are eligible but **home-based businesses are not eligible**. The acquisition of eligible equipment as it relates to NJ MVP must be executed at arm’s length.

*Application Process:*

Applications will be received on a rolling basis and the application period will remain open until all funds are committed. Applicants will have 14 Days after their application is reviewed to provide missing or incomplete documents.

**Delegated Authority:**

Delegation of authority to the Chief Executive Officer to approve individual applications for the NJ MVP for applicants that fit the specific examples outlined in the approved targeted industry definitions, including examples in Advance Manufacturing. Any other applicant that staff considers eligible must go to the Board for approval.

As a pilot program, decisions based on non-discretionary reasons are subject to the existing delegated authority. Accordingly, CEO will delegate to the appropriate staff on all decisions and appeal decisions for non-discretionary reasons.

## **Program Funding**

Per the Appropriations Act for Fiscal Year 2023 (FY2023) (“Act”), the EDA will receive \$35,000,000 in funding for the use of New Jersey Manufacturing Industry Initiative, of which \$20,000,000 will be used for New Jersey Manufacturer Voucher Program (NJ MVP) and deposited into the Economic Recovery Fund. \$1,000,000 will be used to cover administrative costs of this program. The assignment of the funds to the Economic Recovery Fund will allow the Authority to authorize a grant as listed under N.J.S.A § 34:1B-7.13(a)(12), which provides ERF Funds can be utilized “to provide grants or competition prizes to funds initiative based activities which stimulate growth in targeted industries as defined by the authority’s board or supports increasing diversity and inclusion within the State’s entrepreneurial economy. The NJMVP, as a grant program stimulating growth in Advanced Manufacturing, or manufacturing activities in any of the other seven targeted industries, is an eligible use of ERF funding.

## **Fees:**

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

## **Recapture Provision:**

If, in any tax period within the first 3 years of executed grant agreement, the company decides to leave the state, the authority will impose a scaled recapture of the award based on the scale below:

<b>Moves out of State within</b>	<b>Recapture Percentage of the Face Value</b>
<b>1 year of executed grant agreement</b>	<b>100%</b>
<b>2 years of executed grant agreement</b>	<b>60%</b>
<b>3 years of executed grant agreement</b>	<b>30%</b>

## **Recommendation:**

The Members are requested to approve:

- (1) the creation of the NJ MVP – New Jersey Manufacturers Voucher Program, a pilot program to that will provide New Jersey Manufacturers a grant to access equipment they need to become more efficient, productive, and profitable.
- (2) The utilization of \$20,000,000 from the Fiscal Year 2023 (FY2023) Appropriations Act (“Act”) to capitalize the NJ MVP, New Jersey Manufacturing Voucher Program. The utilization of \$1,000,000 of the \$20,000,000 funding is to be used by the Authority to cover administrative costs that are needed to administer the NJ MVP, New Jersey Manufacturing Voucher Program.

- (3) Delegation of authority to the Chief Executive Officer to approve certain individual applications for the NJ MVP, New Jersey Manufacturing Voucher Program, in accordance with the parameters set forth in this memo and the attached program specifications.



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Tim Sullivan, CEO

Prepared by: Ivan Mendez

Attachments:

Appendix A - Proposed Product Specifications: NJ MVP, New Jersey Manufacturing Voucher Program  
Appendix B – Targeted Industries

## APPENDIX A:

<b>Proposed Program Specifications October 12, 2022</b>	
<b>Funding Source</b>	\$20,000,000 from the Fiscal Year 2023 (FY2023) Appropriations Act (“Act”) to capitalize the NJ MVP, New Jersey Manufacturing Voucher Program, of which \$1 million is for administrative costs.
<b>Program Purpose</b>	NJ MVP will provide New Jersey Manufacturers a grant to access equipment they need to become more efficient, productive, and profitable.
<b>Eligible Applicants</b>	Companies located in New Jersey with a NJ Tax Clearance Certificate.
<b>Eligible Uses</b>	<p>Applicant company must be in a targeted industry</p> <p>Eligible equipment must be used in the manufacturing process. Eligible capital assets shall include any form of manufacturing equipment, technologically advanced equipment or production/operating systems, including but not limited to robotics, additive manufacturing, hardware or software for digital twinning, advanced sensor or control systems, IIoT (interconnected sensors, instruments, and other devices networked together with computers' industrial applications) systems and related security</p>
<b>Grant Amounts</b>	30% - 50% of eligible project cost with a minimum of \$7,500 and capped at \$250,000.
<b>Fees</b>	As listed in N.J.A.C. § 19:30-6.1, a non-refundable fee of \$1,000 shall accompany every application.



## **MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** March 8, 2023

**SUBJECT:** EpiBone, Inc. Emerge Tax Credit Program Application

### **REQUESTS:**

- 1) The Members of the Authority are asked to approve the proposed Emerge New Jersey tax credit award, based on the company's growth plan with a maximum of 90 new full-time employees for a total of \$5,700 per employee, per year, for up to seven (7) years to induce EpiBone to site the project in New Jersey. The applicant qualifies for the "Small Business" designation.

### **ABOUT THE EMERGE PROGRAM**

The Emerge Program, created under the Economic Recovery Act (ERA) of 2020, encourages economic development in the State's priority sectors by providing per-job tax credits for up to seven years (the "eligibility period"). To be eligible for Emerge Program support, a project must meet various eligibility criteria at application and at project certification, including locating in a qualified incentive area, creating a minimum number of new jobs or retaining a significant number of at-risk jobs, and (except for applicants qualifying as "small businesses") meeting minimum capital investment requirements. In addition, the project must comply with certain standards during a commitment period, which is set at 1.5 times the eligibility period rounded up to the next whole year. Upon approval and demonstration of site control and financing, the business must execute a commitment agreement. Full description of the program and the current version of the program's rules can be found at <https://www.njeda.com/emerge>.

The Emerge Statute requires projects to create positive economic benefit to the State equal to between 400 and 200 percent of the award. Generally, the project must yield a benefit to of 400%; however, projects located in distressed municipalities or enhanced areas must yield a 300% benefit and projects located in government-restricted municipalities, or mega projects, must yield a 200% benefit.

Projects must also demonstrate that the award of the tax credit is a "material factor" in the applicant's decision to create and/or retain the number of new and retained full-time jobs in New Jersey as specified in the business's application. To qualify as a position eligible for a tax credit, the employee filling the position must spend at least 80 percent of the employee's work time in New Jersey. The business must also ensure that not less than 80 percent of the withholdings of

new or retained full-time jobs are subject to the 'New Jersey Gross Income Tax Act'. The location of the project (the "Qualified Business Facility") must be able to accommodate at least 50 percent of the incented new and retained jobs.

To be awarded Emerge tax credits, the applicant must be in good standing with the NJ Department of Labor and Workforce Development, NJ Department of Treasury, and the NJ Department of Environmental Protection (as determined by each Department). All projects that receive Emerge support must also meet minimum environmental standards, pay prevailing wages to construction workers and building service workers, and offer health benefits.

Applicants with projects that have a total project cost exceeding or equaling \$10 million must also enter into a Community Benefits Agreement with NJEDA and the county or municipality in which the project is located, unless the municipality certifies the approval letter or a redevelopment agreement for the Qualified Business Facility with provisions that meet or exceed the statutory standards for the Community Benefits Agreement.

Upon completion of the project, the applicant must submit independently prepared CPA cost and job certifications and other documents evidencing completion of the approved project and satisfaction of the eligibility criteria. Once the tax credits are issued, the Emerge credits are certified for use annually and proportionally based on actual job performance (that is, number of new and retained jobs) during that year and an applicant is subject to reduction, forfeiture, and recapture based on various actions, such as job reduction, certain unapproved relocations or Qualified Business Facility property dispositions, and failure to report annually.

### **SMALL BUSINESS DESIGNATION**

The applicant is seeking the small business designation under the Emerge program. The Emerge Program has certain different conditions for small businesses to support their growth in the State with more flexible terms. For the purposes of this program, a "Small Business" is defined as a company engaged in a targeted industry, with less than 100 full-time equivalent (FTE) employees or independent contractors at the time of application, and within 6 months prior to application. This employee count is based on employees of not only the applicant company, but also all affiliates (defined in the Emerge Program as an entity controlled by, that controls, or under common control as defined under the Internal Revenue Code).

For a small business, no new minimum capital investment is 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. For a small business, the employment requirement is a minimum 25 percent growth of its workforce with new full-time jobs within the eligibility period. To demonstrate the growth, the small business must 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 in the State. If a small business demonstrates that it 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. As this is the first approval for an applicant designated as a Small Business and the Emerge statutes and rules contemplate some differences from the typical Emerge process, staff has attached Appendix 3 to explain the proposed approach for Small Businesses.

This applicant company is seeking the small business designation under the Emerge program, EpiBone has provided a growth plan that outlines that the company will have 23 new full-time employees at project completion certification, 29 new full-time employees at the end of year one (1) and grow to ninety (90) full-time employees within their eligibility period.

**APPLICANT:**

EpiBone, Inc (EpiBone)

**PROJECT LOCATION:**

95 Greene Street, Jersey City, NJ 07302  
Census Tract – 34017007500

**PRODUCT NUMBER: PROD-308762****APPLICANT BACKGROUND:**

EpiBone was founded by Dr. Nina Tandon and Dr. Sarindr “Ik” Bhumiratana. EpiBone was incorporated in Delaware during 2013. The company is currently headquartered in Brooklyn, NY and has no employees in New Jersey.

EpiBone, Inc. is a privately-held clinical-stage regenerative Life Science company focused on skeletal reconstruction. The company is in the intersection of biology and engineering and harnesses the power of cells to create living solutions that can become a seamless part of a patient’s body. Using their platform technology, the company is currently developing a pipeline of bone, cartilage, and compound (bone and cartilage) products. EpiBone’s bioreactor technology is an essential component of its bone tissue engineering process and is the culmination of decades of fundamental research and expertise in tissue engineering. The technology was first conceptualized in the laboratory of Dr. Robert Langer at MIT, and further refined by Dr. Gordana Vunjak-Novakovic at her laboratory at Columbia University, along with EpiBone Co-Founders Drs. Nina Tandon and Sarindr Bhumiratana. This foundational intellectual property was then used as the impetus to create EpiBone, spinning the technology out of the university setting, and into the commercial space. This revolutionary technology has opened up new opportunities to grow first-of-its-kind autologous bone grafts, which have now been successfully implanted in six patients, and paved the way for the next generation of EpiBone products in the form of living cartilage grafts.

Their mission is to replace surgery and long recovery for a bone replacement by tapping into patients own cells for better integration, and without the possible complications of immune rejection. The company uses cell biology and engineering technologies enable bio-manufacturing of live, anatomically correct tissue replacement to grow to fit and integrate.

EpiBone first uses a CT scan to determine the exact 3D size and shape of the bone a patient needs. At the same time, they extract adult stem cells from the patient’s abdominal fat. They then create a precise, personalized model (or “scaffold”) of the needed bone. They also design and build a custom bioreactor that will incubate the new bone as it grows. Meanwhile, they nourish the stem cells such that they multiply and start becoming bone cells. During the bone growth phase, all the ingredients come together. They infuse the stem cells into the scaffold and grow them inside the bioreactor. In that carefully crafted environment, the cells remodel into a personalized bone graft ready for implantation.

The technology at the heart of EpiBone is the bioreactor. Its task is essential and delicate: to mimic the finely calibrated conditions in the human body that enable bone to grow. Strong, living tissue can only form where the nourishment, temperature, movement, and pressure are just right. Their proprietary bioreactor technology is the product of 20 years of fundamental research and experience with orthopedic tissue engineering. According to the applicant, in the EpiBone bioreactor, they can grow a new, personalized bone in just three weeks.

The company is still in the early discovery stages and has three products in various stages of clinical development. One is moving to a Phase IIB/III clinical trial, and the applicant would be working to refine the future state process to manufacture these clinical-grade grafts. The second product, EB-OC product is nearing the Investigational New Drug Application (IND) submission stage scheduled for Q1 2023, at which point they would be producing clinical-grade grafts in-house for this product's clinical trial. Lastly, their EB-IAC product is in pre-clinical development, and the applicant will be working on generating the data necessary for an IND submission.

The company as of December 31, 2022, has raised additional funding in private equity funding. The Company expects to start raising another round this year (Series A2), and a Series B in the second half of 2024 as they have more clinical data. Some of their investors are Alexandria Venture Investments, EMV Capital, NetScientific PLC, Hackensack Meridian Health, Tech Council Ventures (NJEDA is a limited partner/investor), Tachyon Ventures, Grand Central Tech, Plum Alley Investments, MBX Capital, Partnership Fund for New York City (501c3 entity that works with NY EDC) and Cedars Sinai.

**FOUNDERS BACKGROUND:**

CEO, Co-Founder Dr. Nina Tandon has over 10 years of experience in tissue engineering and more than 8 years in bioreactor design. She completed two advanced degrees at Columbia University: a Ph.D. and postdoc in stem cells and tissue engineering and an Executive MBA in healthcare entrepreneurship. Named one of the 100 most creative people in business by Fast Company, she is also a TED Senior Fellow and MIT & McKinsey alum.

Dr. Sarindr “Ik” Bhumiratana, CSO and co-founder, moved to the U.S. to pursue science. His PhD and postdoc at Columbia University focused on engineering bone, cartilage, and osteochondral tissues from stem cells. He now works to translate that innovation toward clinical use at EpiBone. Dr. Bhumiratana holds two patents and has authored four book chapters and more than 15 journal articles related to bone and cartilage tissue engineering.

**PROJECT BACKGROUND:**

EpiBone is looking to expand their operations from their current location at the Downstate Biotechnology Incubator space in Brooklyn. This space is too small for their projected growth requirements. The business is in clinical trials with patients in their EB CMF Phase I/IIa and will require its own clean room, a bigger facility, and a larger support staff.

The new proposed project would include a headquarters operation, R&D facilities, and clean room space. The type of jobs would be the following but not limited to, executive team, clinical positions, research, system engineers, lab support, QC & QA specialist, manufacturing support, HR, Accounting, Finance, support staff, legal, and information technology positions.

The applicant currently maintains 5000 sq. feet in Brooklyn NY and has the opportunity to grow at 30-02 48th Avenue, Long Island City, New York or at 95 Greene St, Jersey City, NJ. In New York, the applicant is looking to lease 23,620 rentable square feet. The R&D and office portion of

the requirement is approximately 13,645 SF and 9,975 SF (the "Clean Room Premises"). The NY site is owned by an affiliate of one of the company's investors – Alexandria Venture Investors.

The NY property is second generation space and does not need a lot of improvement except for the clean room. The investment will be primarily in equipment and some tenant improvements of approximately \$2,194,500.

The NJ site is total leasable space of 28,089 square feet. The R&D portion is 4,735 and office/lab space is 23,354 square feet. The space requires tenant improvements greater than the New York location as well as equipment investment.

The applicant believes that it needs to be able to continue to attract and maintain a highly skilled professional workforce. The Long Island City location can provide that opportunity. In addition, the New York space offers common areas (marketed by the landlord as Science Hotel common area) where each tenant will have access to the following: shared conference rooms, shared kitchen/pantry, shared autoclave room, shared IT/server closet, shared storage room, and shared wellness room. The autoclave room includes an autoclave, icemaker, and scullery sink. Due to the availability of the Science hotel common area the company can save on leasing less in New York.

The applicant would create 90 new jobs with a total payroll of \$10.6M by 2027. If EpiBone decides to relocate to NJ and establish R&D, HQ, and clean room space the initial employment for the first year would be 29 new full-time employees and will grow each year to approximately 90 employees by 2027, surpassing the required 25% minimum job growth required by the Small Business Feature of the EmERGE program.

Additional details on the project can be found in Appendix 1: Project Summary.

## TARGETED INDUSTRY

Based on the facts and information provided by the company and to which the company CEO or equivalent officer has certified, staff concludes that EpiBone, Inc., meets the "Targeted Industry" definition of the "Life Science." Specifically, EpiBone, Inc is in the research, development, commercialization, manufacturing, and implementation of innovative treatments within the Biotechnology sector which is called out in the Board approved industry definition as noted below.

*"Life sciences industry includes, but is not limited to, the research, development, commercialization, manufacturing, and implementation of innovative treatments, diagnostic tools, healthcare related software, medical devices, services, and equipment that supports the study, protection and improvement of plant, animal, and human life.*

*Examples of life science industry practices include specialization in biomedicine, biochemistry, pharmaceuticals, biophysics, neuroscience, cell biology, biotechnology, medical devices, nutraceuticals, health-technology, botany and advanced agricultural development, cosmeceuticals, and life systems technologies. This industry also includes firms that manufacture either finished or interim advanced technologies or components.*

*Exclusions from this industry include direct provision of health care services in hospitals, outpatient facilities, dentist offices, nursing homes, or within a home setting."*

**MATERIAL FACTOR:**

Staff concludes that, based upon the information provided by the applicant and to which the applicant CEO or equivalent officer has certified, the award of incentives is a material factor in the applicant's decision to locate the project in New Jersey. Staff does not find that the incentive award is the only factor driving the applicant's decision.

In a cost differential analysis between New Jersey and New York, New Jersey is more expensive by \$1,916,008, which over 11 years represents a 6% differential in total project cost comparison as highlighted in the Appendix 1: Project Summary between two neighboring state locations. The driving factor is the rent for a larger space and fit-out improvements required. While the rent is cheaper in Jersey City, NJ per square footage, the company would need to occupy more space versus the Long Island City location which offers additional free common space area. Also, the applicant will utilize the tenant improvement of \$2.5M paid by the landlord plus another \$1M option in improvements for the New Jersey site which the applicant forecasts to use that the Landlord will pay upfront but charge the company over 10 years at 7% interest rate which will be added to the base rent. This increases the costs for the New Jersey location. NJEDA staff had to normalize the size difference to do an exact cost comparison. Staff reduced the Jersey City space (28,089sf) to equal that of the Long Island City (23,620sf) lease space to do a comparable comparison.

Specifically, the New Jersey facility can accommodate the headquarters operation, clean space, and R&D facility. The facility in New Jersey boasts the same advantages that the facility in New York has to offer and has sufficient public transportation access. The labor costs are comparative, and the employment market are similar. Both buildings are designed for Life Science companies and are comparable. Although the rent in New Jersey is cheaper in square footage, the company would need to lease and additional square footage in Jersey City given that New York offers more common area space. The Long Island City offers what they refer to as "Science Hotel common areas" which tenants will have access to the following common areas and equipment: shared conference rooms, shared kitchen/pantry, shared autoclave room, shared IT/server closet, shared storage room, and shared wellness room. The autoclave room includes an autoclave, icemaker and scullery sink. The IT/server closet will be equipped with lockable server cabinet space allocated to each tenant.

The applicant has toured both markets, including visiting and touring locations/buildings, and issuing Requests for Proposals (RFP's) to the respective landlords to solicit real estate bids. The applicant has received draft leases for both locations.

The Material Factor Risk rating model demonstrates that EpiBone has a robust rating supporting their Material Factor. The fact that they are a New York-based company, which may remain in NY is what leads staff to support the company's assertion that the Emerge tax credits are a material factor in the company's location decision.

The amount of incentives at the New York location are also a distinct advantage of the New York site, which includes a refundable tax credit of up to \$1,500,000 and a five (5) year property tax abatement valued at \$235,609.50. The incentives will help defray the costs and is a variable in the Company's analysis. The staff received an incentive award letter from New York State showing proof of their offering and tax abatement letter from the municipality. The Authority has taken the position to not include alternate incentives in the Cost Comparison, as they may have long term underlying restrictions or requirements that impact costs, however staff has identified the \$1.5M incentive that is being offered by New York in the inducement model and Material Factor risk rating model, as the NY incentive has been offered to persuade them.

According to the applicant, the NY facility will also allow them to attract a steady workforce that can accommodate their new headquarters operation without losing and disrupting their current NY employee base.

The building in Long Island City is a renovated building for the purpose of attracting Bio-Tech and Life Science companies. The owners of the building, Alexandria Real Estate Equities, Inc. is a real estate investment trust that invests in office buildings and laboratories, leased to tenants in the life science and technology industries. The company also has a venture capital arm, Alexandria Venture Investments, which invests in life sciences firms. Alexandria Venture is one of the investors in EpiBone. Alexandria Venture Investments would prefer EpiBone to lease their space.

In addition, as part of the application, the applicant was required to list the top five factors driving their decision and provide relative weighting. EpiBone listed the following factors:

### Key Factors

Factor	Weight
Costs	60
Talent Pool	20
Proximity to Colleges/Universities	20
Total: 100	

Based upon these decision factors, staff reviewed the relative advantages and disadvantages of Jersey City, NJ compared to the Long Island City, NY. Based on the applicant's justifications provided, staff believes that these decision factors are consistent with the company's assertion that the award of Emerge tax credits is a material factor finding because all other factors are generally comparable on non-cost factors. In terms of business operations, the New Jersey site and the alternative New York site offer close to identical benefits. Both sites are relatively the similar proximity to the New York City-Newark-Jersey City Metro market, are within driving distance to the airports and have access to higher education offering top level talent. Both sites would allow the company's existing employee base to continue to commute to the office.

Additional factors supporting the material factor finding include:

- The applicant currently has a site in New York.
- Both sites are focused on attracting Life Science companies with lab space along with R&D space.
- Both real estate transactions were at a similar level of maturity at the time of application.
- The types of jobs included in the project are a reasonable fit for both New Jersey and New York in terms of available talent pools and cost of salaries.

Overall, staff conclude that the applicant's decision factors, and decision-making process are consistent with the award of an Emerge incentive being a material factor in their decision making.

Staff independently determined that the alternative site was in fact currently available and on the market using CoStar as well as on LoopNet.

**AWARD GRANT CALCULATION:**

Based on the project's characteristics, including number of new full-time jobs, bonuses, location, and designation as a Small Business, staff are recommending an award of \$5,700 per new full-time job, per year. As required by the Emerge statute and rules, the applicant submitted a job growth plan for the eligibility period, starting with their current baseline of 0 full-time employees in New Jersey. The applicant has requested a seven-year eligibility period, corresponding to an 11-year commitment period with a range of 29 initial new full-time jobs and a maximum 90 new full-time employees. This surpasses the minimum 25% growth from baseline. Based on the growth plan, the total annual amount of tax credits ranges from \$165,300 to \$513,000. Over the course of the seven-year eligibility period, the total recommended award of tax credits for this project is up to \$3,591,000. Based on the projected job growth supplied by the applicant, the total tax credit is projected to be \$2,502,300 over the seven years (see Appendix 2).

As stated in the program regulations, project full-time employees that will primarily work (that is, over 50% of the employee's time for employees assigned to a single location) at the Qualified Business Facility are calculated at the full base and bonus award, up to the capped amount. Any full-time employees that are associated with the project but not primarily working at the Qualified Business Facility are calculated at the lower base amount of \$500 (the base for an "other eligible area") with limited bonuses that are not attributed to the facility. This project according to the applicant will have all of their full-time jobs primarily working at the Qualified Business Facility.

A summary of the per job award calculation is included in the table below and for the full project of award based on growth plan see Appendix 2.

**Award Summary**

Location/Project Type		Amount	
<b>Annual Base Award Per Job:</b>	<b>Enhanced Area</b>	<b>\$</b>	<b>3,500.00</b>
<b>Applicable Bonuses:</b>			
<b>Targeted Industry</b>	<i>Life Science</i>	<b>\$</b>	<b>500.00</b>
<b>Qualified Small Business</b>		<b>\$</b>	<b>500.00</b>
<b>Collaborative Research with University or College (anticipated)</b>		<b>\$</b>	<b>1,000.00</b>
<b>*Excess of Hudson County Median Salary Bonus</b>		<b>\$</b>	<b>200.00</b>
<b>Total Applicable Bonuses</b>		<b>\$</b>	<b>2,200.00</b>
<b>Maximum Annual Award (Base + Bonuses)</b>		<b>\$</b>	<b>5,700.00</b>

**NET BENEFIT:**

The required amount of net positive economic benefit to the State for a project located in an Enhanced Area is 300% of the award.

In evaluating the net benefit for this project, staff need to select appropriate inputs into the Board approved IMPLAN economic model. IMPLAN's model allows for users to group NAICS industry codes together to generate results which are a hybrid of different industries and therefore better reflect the complexity of some projects.

The NAICS code provided by EpiBone in its program application was 541714 (Research and development in biotechnology, except nanobiotechnology). Based on the specific scope of the proposed project, including the types of activities, business units, and job functions disclosed as part of the application, staff determined that this single NAICS codes accurately reflect the full scope of the project.

As additional inputs into the model, staff phased in the new jobs and salaries based on the applicant's job growth plan. The cumulative wages for these jobs were \$10,622,246. Finally, the landlord contribution for renovation costs of up to \$3,500,000 was not included in the calculation for this project because the applicant qualifies for the Small Business designation and would not otherwise have to certify capital investment costs.

The Emerge statute requires the Authority to perform this analysis in terms of net present value, i.e., the benefit in the future should be expressed in dollars today. Additionally, the statute requires the discount to reflect the uncertainty of the company's commitment after the commitment period expires. As such, the Authority will discount expected future revenues to the State accordingly. This is a two-step process. First, given the IMPLAN model estimates an impact on government revenue, the Authority must estimate the growth of future annual revenues. The Authority does this by growing future State revenues by an estimated rate of inflation. The inflation rate is set based on a five-year mean of the Personal Consumption Expenditures Price Index as provided by the Survey of Professional Forecasters adjusted annually; initially this has been set at an annualized rate of two percent. Second, the Authority must then discount these future State revenues. To calculate the discount rate, staff starts with an industry accepted net present value discount rate, which currently is six percent. To account for the significant risk and uncertainty associated with revenues in the furthest years out, and as directed by the Emerge Statute specifically for years after the eligibility period (but during the commitment period), the discount rate is increased by two percent (so, currently eight percent). State revenues resulting from construction expenditures and upfront costs do not need to be discounted as they would occur prior to the issuance of any tax credits awarded to a company.

Based on the Program's statute and regulations, the net positive economic benefits calculated for all projects must 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. Using the discount rate approved by the Board, the present value of \$2,502,300 total award amount results to \$1,861,129. The present value of the \$9,900,237.27 calculated net positive economic benefit is \$5,984,431.72. This yields a 322% net positive economic benefit coverage ratio, which is above the required statutory hurdle rate of 300% for this project based on the applicant's growth plan.

<b>NBT Summary</b>	
<b>NPV with No Construction cost (11 years with 2% inflation and discounted at 8%)</b>	<b>\$5,984,431.72</b>
Total Projected Emerge Award	\$2,502,300
Annual Emerge Award	\$357,471
<b>NPV of Award (7 years discounted at 8%)</b>	<b>\$1,861,129</b>
<b>Coverage ratio of award</b>	<b>322%</b>
Statutory minimum coverage ratio of award	300%

Please note, if the applicant does maximize the full award of \$3,591,000 the anticipated Net Benefit coverage ratio of award would yield 368%. Using the discount rate approved by the Board, the present value of \$3,591,000 total award amount results to \$2,670,867.84. The present value of the \$10,968,293.34 calculated net positive economic benefit is \$6,849,925.96.

**FINANCIAL REVIEW SUMMARY:**

Based on the Authority's financial review, Authority underwriting staff concludes that the Applicant has adequate sources of funding and equity to cover the Project costs and there is a reasonable expectation these sources of funding will be available to complete the project. Based on the information provided, it is feasible that EpiBone has the ability to complete the project as planned based on the landlord funding the tenant improvements, EpiBone's current cash position and the capital funding anticipated to be received the second quarter 2023. See confidential memorandum of the company's financial review for full details which also outlines all the risk factors associated to the Applicant.

**AVAILABLE PROGRAM CAP:**

The Emerge Program is capped with NJ Aspire program at \$1.1B per year, over 6 years with the unused portion during any of the first six years can be rolled-over in subsequent years limited by geographic location. If the Board approves this project being presented today, EpiBone (up to \$3,591,000) the Programs will have an available balance of \$3,177,183,425 for State Fiscal Year 2023.

**APPLICABLE DEADLINES:**

Within the earlier of 12 months of the date of the Board's approval or six months after the date of execution of the approval letter, the company shall submit progress information indicating that the business has site plan approval (if applicable), committed financing (if applicable) for, and site control of the qualified business facility.

Applicant shall have three years to complete the project and submit the certifications and evidence of project completion and satisfaction of program eligibility criteria.

**CONDITIONS OF APPROVAL AND PROJECT CERTIFICATIONS:**

Staff recommend that the award include the following conditions of approval:

1. Applicant has not executed a letter of intent, lease, or purchase agreement or any other site control document.
2. If in the project completion certifications, the number of new full-time employees or the median salary is reduced by more than 10% from the number or salary for the project completion certification, the net benefit to the state will be recalculated under the then current net benefit model and the size of the tax credits may be reduced accordingly.
3. The number of new employees in each year must meet the number of new full-time employees specified in the growth plan. If the annual report provides that the number of new full-time employees or the salaries of the new full-time employees is less than the number or salaries projected in the growth plan (Appendix 2), the Authority will recalculate the net benefit to the State under the then current net benefit model and the size of the tax credits may be reduced accordingly.
4. Applicant may relocate during their eligibility period or commitment period and continue to receive the tax credits as long as the applicant stays in New Jersey. The award shall be recalculated if the applicant moves to a different incentive location other than Enhanced Area.

5. In each year that the applicant meets the number of new full-time employees specified in the growth plan, then the applicant shall receive the increased credit amount for that tax period (with a limit of the maximum number of Emerge jobs) until the year in which the applicant's 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 be a default but shall cause the Authority to reduce the award, based on the annual credit per full-time employee, to the lesser of (1) the tax credit amount for the last year in which the applicant met the growth plan projection as specified in Appendix 2 or (2) the actual number of full-time jobs for the year.
6. The tax credit amount for any full-time employees that are associated with the project but not primarily working at the Qualified Business Facility shall be \$2,500 (the lower base amount of \$500 for an "other eligible area" and only the Qualified Small Business \$500, Targeted Industry \$500, and Collaborative Research with University or College \$1,000 bonuses).
7. To be eligible for the bonus for the collaborative research with a university or college, the applicant must provide with the project completion certifications an agreement with a university or college evidencing the collaborative research. To maintain the bonus, the agreement must remain in effect each year of the eligibility period.

## CONCLUSION

- 1) The Members of the Authority are asked to approve the proposed Emerge New Jersey tax credit award, based on the company's growth plan with a maximum of 90 new full-time employees for a total of \$5,700 per employee, per year, for up to seven (7) years to induce EpiBone to site the project in New Jersey. The applicant qualifies for the "Small Business" designation. The recommended tax credit award is subject to conditions subsequent to receive and maintain the award, including submission of certifications and evidence that the company has met the eligibility criteria. Staff is authorized to lower the award amount and shorten the term to reflect the award amount that corresponds to the actual employment in the project completion certification provided that neither the application information nor the project has materially changed and no analysis, such as the net positive economic benefit analysis, must be re-evaluated.



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Tim Sullivan, CEO

**PRODUCT OFFICER:** Mathew Abraham

**APPROVAL OFFICER:** Kathleen Coviello

## INCLUDED ANALYSES:

Appendix 1: Project Summary

Appendix 2: Projected Award Based on Job Growth Plan

Appendix 3: Small Business Growth Plan Policy

Appendix 4: Full Financial Review

## Appendix 2: Projected Award Based on Job Growth Plan

## Award Summary

	Location/Project Type		Amount
Annual Base Award Per Job:	Enhanced Area	\$	3,500.00
<b>Applicable Bonuses:</b>			
Targeted Industry	<i>Life Science</i>	\$	500.00
Qualified Small Business		\$	500.00
Collaborative Research with University or College		\$	1,000.00
*Excess of Hudson County Median Salary Bonus		\$	200.00
Total Applicable Bonuses		\$	2,200.00
Total Max Award (Base + Bonuses)		\$	5,700.00

## NEW JERSEY BASELINE EMPLOYMENT (AT APPROVAL)

Total Full-Time Jobs	0
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## PROJECT COMPLETION CERTIFICATION

Total Full-Time Jobs	23
Median Salary	\$ 87,167.00

## YEAR 1

Award  
Summary

Total Applicable Bonuses	\$	2,200.00
Total Max Award (Base + Bonuses)	\$	5,700.00
Total Full-Time Jobs	Award Amount Per Year	
New Jobs Year 1	29	\$ 165,300.00

Median Salary Year 1	\$	85,000.00
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## YEAR 2

## Award Summary

Total Applicable Bonuses		\$	2,200.00
Total Max Award (Base + Bonuses)		\$	5,700.00
	Total Full-Time Jobs		Award Amount Per Year
TOTAL JOBS Year 2	38	\$	216,600.00

Median Salary Year 2	\$	85,000.00
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## YEAR 3

## Award Summary

Total Applicable Bonuses		\$	2,200.00
Total Max Award (Base + Bonuses)		\$	5,700.00
Total Full-Time Jobs		Award Amount Per Year	
TOTAL JOBS Year 3	53	\$	302,100.00

Median Salary Year 3	\$	84,284.00
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## YEAR 4

## Award Summary

Total Applicable Bonuses		\$	2,200.00
Total Max Award (Base + Bonuses)		\$	5,700.00
Total Full-Time Jobs		Award Amount Per Year	
TOTAL JOBS Year 4	60	\$	342,000.00

Median Salary Year 4	\$	85,000.00
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## YEAR 5

## Award Summary

Total Applicable Bonuses	\$	2,200.00
Total Max Award (Base + Bonuses)	\$	5,700.00
Total Full-Time Jobs		Award Amount Per Year

<b>TOTAL JOBS Year 5</b>	<b>79</b>	<b>\$</b>	<b>450,300.00</b>
Median Salary Year 5		\$	84,850.00

**YEAR 6****Award  
Summary**

Total Applicable Bonuses		\$	2,200.00
Total Max Award (Base + Bonuses)		\$	5,700.00
<b>Total Full-Time Jobs</b>		<b>Award Amount Per Year</b>	
<b>TOTAL JOBS Year 6</b>	<b>90</b>	<b>\$</b>	<b>513,000.00</b>
Median Salary Year 6		\$	84,850.00

**YEAR 7****Award  
Summary**

Total Applicable Bonuses		\$	2,200.00
Total Max Award (Base + Bonuses)		\$	5,700.00
<b>Total Full-Time Jobs</b>		<b>Award Amount Per Year</b>	
<b>TOTAL Year 7</b>	<b>90</b>	<b>\$</b>	<b>513,000.00</b>
Median Salary Year 7		\$	84,850.00

**AWARD****Award  
Summary**

<b>Total Award for 7 Years Based on Growth Plan</b>		<b>\$</b>	<b>2,502,300.00</b>
<b>Maximum Award for 7 Years Based on Maximum 90 Full-Time Jobs</b>		<b>\$</b>	<b>3,591,000.00</b>

**Appendix 3: Small Business Growth Plan Policy**

In accordance with the Emerge Statue and as per the rules N.J.A.C. 19:31-22.3(c)1, a business that is designed “small business” under the Emerge program has the opportunity for eligibility in the program by providing a growth plan that demonstrates a 25% growth of its workforce with new full-time jobs within the eligibility period starting from the from the New Jersey baseline at approval.

The growth plan must include the number of new full-time jobs by title or type, as well as the respective salaries, that the small business intends to create each year during the eligibility period in the State. The total job count demonstrated in the growth plan will be used to estimate the projected annual and total award and over the term of the eligibility period as well as used in the Net Benefit calculations to the State. The maximum annual and total award will be based on the maximum annual number of full-time jobs in the growth plan.

The New Jersey baseline is established by the applicant at the time of application based on the full-time jobs located in New Jersey at the time of application. In the annual report, the applicant will certify to their actual full-time new jobs created, by title/type, and respective salaries.

**Meets or exceeds Growth Plan**

- If the annual report submitted by a small business demonstrates that the business has met the number of new full-time jobs specified in the growth plan for the given year, then the business shall be eligible to the corresponding credit amount for that tax period, and each subsequent tax period, for each additional new full-time jobs added above the number of full-time jobs certified, until the new full-time jobs number meets the maximum number projected for the final year of the eligibility period.

**Failure to meet Growth Plan**

- If in any year the job categories or salaries are reduced from the growth plan approved by the Board, the Authority will review the net benefits generated with the then current net benefit model and adjust the annual award accordingly.
- Failure to meet the projections in any year shall not constitute a default, provided the applicant maintains the existing New Jersey baseline, but shall cause the Authority to reduce the award, based on the tax credit per full-time job, the lesser of (1) the tax credit amount for the last year in which the company met the growth plan or (2) the actual full-time job count. A schedule will be attached to the project agreement with the growth plan.
- If the applicant falls below the New Jersey baseline, the applicant will forfeit that year’s tax credit allocation.
- If the applicant does not achieve the required 25% growth from the New Jersey baseline within the eligibility period, the applicant will no longer be eligible and will be subject to recapture.

The following illustrations outlines scenarios for existing New Jersey Company and for new company to the State:

Scenarios for the yearly credit issuance for: <b>SAMPLE CO.</b>						
PRODUCT #: <b>123</b>						
New Jersey Jobs listed on Employee Worksheet (Baseline): <b>20</b>						
	Approved Growth Plan (GP)	Total NJ Employment	Applicant Certifies FTE	Result	Amt of Credits to be issued	Reasoning
Year 1	2	22	22	Credits issued for:	2	GP Met
Year 2	4	24	26	Credits issued for:	6	GP Exceeded: receives full credit for all New FTE
			23	Credits issued for:	2	GP Missed: lesser of either the prior year's plan or actual
			18	Applicant Forfeit's this year's allocation	0	GP Missed: Fell below baseline
Year 3	10	30	26	Credits issued for:	4	GP Missed: lesser of either the prior year's plan or actual
			22	Credits issued for:	2	GP Missed: lesser of prior year's plan or actual
			18	Applicant Forfeit's this year's allocation	0	GP Missed: Fell below baseline
Year 4	18	38	40	Credits issued for:	20	GP Exceeded: receives full credit for all New FTE
			35	Credits issued for:	10	GP Missed: lesser of either the prior year's plan or actual
			29	Credits issued for:	9	GP Missed: lesser of either the prior year's plan or actual
Year 5	20	40	55	Credits issued for:	30	GP Exceeded: Applicant capped at GP
			48	Credits issued for:	28	GP Exceeded: receives full credit for all New FTE
			36	Credits issued for:	16	GP Missed: lesser of either the prior year's plan or actual
Year 6	25	45	52	Credits issued for:	30	GP Exceeded: Applicant capped at GP
			48	Credits issued for:	18	GP Exceeded: receives full credit for all New FTE
			42	Credits issued for:	20	GP Missed: lesser of either the prior year's plan or actual
Year 7	30	50	18	Applicant Forfeit's this year's allocation	0	GP Missed: Fell below baseline
			60	Credits issued for:	30	GP Exceeded: Applicant capped at GP
			48	Credits issued for:	25	GP Missed: lesser of either the prior year's plan or actual
			21	Applicant Forfeit's and Recapture	0	GP Missed: Program requires a min job growth of 25%

Scenario for the yearly credit issuance for: <b>SAMPLE NEW TO NJ CO.</b>						
PRODUCT #: <b>987</b>						
New Jersey Jobs listed on Employee Worksheet (Baseline): <b>0</b>						
	Approved Growth Plan (GP)	Total NJ Employment	Applicant Certifies FTE	Result	Amt of Credits to be issued	Reasoning
Year 1	29	29	29	Issues credit for:	29	GP Met
Year 2	38	38	42	Issues credit for:	42	GP Exceeded: receives full credit for all New FTE
			35	Issues credit for:	29	GP Missed: lesser of either the prior year's plan or actual
			20	Issues credit for:	20	GP Missed: lesser of either the prior year's plan or actual
Year 3	53	53	60	Issues credit for:	60	GP Exceeded: receives full credit for all New FTE
			48	Issues credit for:	38	GP Missed: lesser of either the prior year's plan or actual
			9	Issues credit for:	9	GP Missed: lesser of either the prior year's plan or actual
Year 4	60	60	45	Issues credit for:	45	GP Missed: lesser of either the prior year's plan or actual
			29	Issues credit for:	29	GP Missed: lesser of either the prior year's plan or actual
Year 5	79	79	80	Issues credits for:	80	GP Exceeded: receives full credit for all New FTE
			62	Issues credit for:	60	GP Missed: lesser of either the prior year's plan or actual
Year 6	90	90	80	Issues credits for:	79	GP Missed: lesser of either the prior year's plan or actual
			9	Issues credit for:	9	GP Missed: lesser of either the prior year's plan or actual
Year 7	90	90	100	Issues credits for:	90	GP Exceeded: Applicant capped at GP
			62	Issues credits for:	62	GP Missed: lesser of either the prior year's plan or actual
			9	Issues credits for:	9	GP Missed: lesser of either the prior year's plan or actual



## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** March 8, 2023

**SUBJECT:** **World Business Lenders, LLC (“WBL”)**  
Grow New Jersey Assistance Program (“Grow NJ”) –  
COVID-Related Termination  
P #42005 (PROD-00183899)

### **Request:**

Approve World Business Lenders, LLC’s (“WBL”) request to terminate its Grow NJ Incentive Agreement effective 2020 pursuant to the COVID-Related Relief provisions the New Jersey Economic Recovery Act of 2020 (“ERA”), P.L.2020, c. 156, as amended by P.L. 2022, c. 134.

Approval of this request shall be conditioned upon the timely receipt of WBL's outstanding recapture payment.

### **Background:**

WBL is a commercial lender specializing in providing working capital to small and medium size businesses, though it employs its own underwriting guidelines as a private and direct lender. On February 9, 2016, the Members approved a \$16,875,000 10-year Grow NJ award to incent the creation of 225 new Grow NJ eligible jobs with an estimated capital investment of \$2,102,400 at an existing 35,040 square foot non-industrial premises, refurbished as office space as its Qualified Business Facility (“QBF”) located at 101 Hudson Street in Jersey City.

In December 2016, WBL certified project completion with 225 new Grow NJ eligible jobs. WBL maintained the required jobs for the 2016 tax year and was issued an Annual Tax Credit Certificate in the amount of \$1,687,500.

In tax years 2017 and 2018, WBL forfeited each tax year as the company did not meet its minimum job number requirement, which constituted an Event of Recapture under its Grow NJ Incentive Agreement (Agreement). This resulted in a recapture of \$58,857.51, which was received in December 2020. Once EDA declares an Event of Recapture, each subsequent act of non-compliance results in an Event of Recapture under the Agreement.

WBL forfeited its tax year 2019 for not meeting its minimum job number requirement and was sent a letter on February 15, 2023 requesting a recapture payment in the amount of \$38,960.73 for that year to be remitted no later than March 16, 2023. Staff recommends that approval of this termination be conditioned upon receipt of the recapture payment by March 16, 2023. Failure to remit timely shall result in a termination without protections provided through the COVID Relief provision. Though the company reported 185 Grow-eligible jobs on its 2019 annual compliance report submission, staff determined 48 jobs were not eligible as those employees were not

offered Health Benefits in their first three months of employment bringing the monthly jobs average below the program minimum. As per Grow NJ laws and regulations, a “full-time employee” must be offered eligible Health Benefits by the company.

On August 17, 2020, WBL entered into a lease termination agreement with the landlord to vacate the QBF by August 31, 2020, citing COVID-related concerns. EDA received a letter on January 26, 2021, from the company advising EDA that the company had vacated the QBF.

Ceasing operations at the QBF is an Event of Default under the NJ Grow Incentive Agreement. With no QBF, WBL is not be able to meet its annual job 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 the eligibility period.

Generally, staff proceeds with a termination of an Incentive Agreement and partial recapture of tax credits paid upon knowledge that a business ceases operations at its QBF and will no longer be able to meet its minimum job requirements. However, WBL formally requested to terminate its Grow NJ Incentive Agreement on October 29, 2021, due to COVID-related impacts. Staff then paused the termination process for resolution of the relief request by the Board.

WBL has now requested a COVID-Related Relief termination effective 2020 per recent amendments to the Grow NJ law. With this request, the project is not required to submit annual compliance reports for tax years 2020 through 2022, and any annual reports forward.

### **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 as amended by P.L. 2022, c. 134, amended the Grow NJ law to allow businesses to terminate Grow NJ Incentive Agreements retroactively beginning with tax year 2020 “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.

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 without a full repayment of previously issued tax credits.

Tax credits issued for previous years may be retained by the business without recapture while the business is relieved of all ongoing reporting obligations. However, pre-ERA job-related defaults must be cured before termination. 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.

### **WBL's COVID-19 Impacts and Decisioning**

Prior to the onset of the COVID-19 Pandemic, WBL employed 190 Grow-eligible full-time positions at the QBF. In response to the COVID-19 pandemic and Governor Murphy's Executive Order 107 on March 21, 2020, mandating that all non-essential businesses in New Jersey implement work-from-home arrangements, WBL required employees to work from home.

WBL's QBF was situated on the 33<sup>rd</sup> floor of a high-rise building requiring elevator travel to an open floor plan with close working quarters. WBL requested the termination of its Grow NJ Incentive Agreement because the close quarters resulted in a lack of social distancing in the office, making working at the QBF undesirable. Further, the downturn in the economy affected the demand for WBL's services. As WBL's work force is now remote, WBL determined that paying rent for unoccupied space was not economical. WBL ceased operations at its QBF in August 2020.

At the time of WBL's COVID-Related termination request in October 2021, the company employed 65 employees.

Staff has concluded that although the lease of its QBF was terminated before the enactment of the ERA Grow relief provisions, it was done so as a commercially reasonable response to the impacts WBL suffered as a result of the COVID-19 Public Health Emergency.

### **Recommendation:**

Approve World Business Lenders, LLC's ("WBL") request to terminate its Grow NJ Incentive Agreement effective 2020 pursuant to the COVID-Related Relief provisions the New Jersey Economic Recovery Act of 2020 ("ERA"), P.L.2020, c. 156, as amended by P.L. 2022, c. 134.

Approval of this request shall be conditioned upon the timely receipt of WBL's outstanding recapture payment.



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Tim Sullivan, CEO

ADOPTED  
MAR 8 2023

Attachments

Resolution of the New Jersey Economic Development  
Authority Regarding the Approval of the World Business  
Lenders, LLC (“WBL”) Grow New Jersey Assistance Program  
(“Grow NJ”) – COVID-Related Termination  
P #42005 (PROD-00183899)

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.

DATED: March 8, 2023

EXHIBIT



## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** March 8, 2023

**SUBJECT:** **Flight Centre Travel Group (USA) Inc.**  
**("Flight Centre")**  
Grow New Jersey Assistance Program ("Grow NJ") –  
COVID-Related Termination  
P #41420 (PROD-00183862)

### **Request:**

Consent to approve Flight Centre Travel Group (USA) Inc.'s ("Flight Centre") request to terminate its Grow NJ Incentive Agreement effective 2020 pursuant to the COVID-Related Relief provisions the New Jersey Economic Recovery Act of 2020 ("ERA"), P.L.2020, c. 156, as amended by P.L. 2022, c. 134.

### **Background:**

Flight Centre Travel Group (USA) Inc. ("Flight Centre") is a travel company whose ultimate parent is Flight Centre Travel Group Limited, an Australian-based international travel company. Flight Centre was approved on October 15, 2015, by the Members of the Board for a \$7,593,750 Grow NJ award to incentivize the retention and relocation of 405 jobs to a 70,836-sf Qualified Business Facility ("QBF") at 5 Paragon Drive, Montvale, NJ. The project anticipated a capital investment of \$9,151,309. EDA and Flight Centre executed a Grow NJ Incentive Agreement on September 23, 2016, which was subsequently amended on February 21, 2017.

On October 4, 2017, Flight Centre certified project completion with the retention of 376 Grow-eligible employees and \$11,455,837 in capital investment. Due to the certification of less jobs than at approval, Flight Centre was approved for a reduced 2016 Grow NJ Aggregate Tax Certificate in the amount of \$6,580,000.

To date, Flight Centre received Grow NJ tax credit certificates in the amounts of \$658,000 in each of the tax years for 2016, 2017 and 2018, and \$605,500 for tax year 2019, for a total of \$2,579,500.

Flight Centre has now requested a COVID-Related Relief termination effective 2020 per recent amendments to the Grow NJ law. With this request, the project is not required to submit annual compliance reports for tax years 2020 through 2022, and any reports forward.

### **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 as amended by P.L. 2022, c. 134, amended the Grow NJ law to allow businesses to terminate Grow NJ Incentive Agreements retroactively beginning with tax year 2020 “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.

Tax credits issued for previous years may be retained by the business without recapture while the business is relieved of all ongoing reporting obligations. However, job-related defaults must be cured before termination. 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.

### **Flight Centre's COVID-19 Impacts and Decisioning**

Prior to the onset of the COVID-19 Pandemic, Flight Centre employed 408 Grow-eligible full-time positions at the QBF. In response to the first positive COVID-19 case at the QBF on March 13, 2020, the company closed its QBF. Governor Murphy's Executive Order 107 on March 21, 2020, mandated that all non-essential businesses in New Jersey implement work-from-home arrangements, therefore Flight Centre required employees to work from home.

As with the travel industry broadly, Flight Centre experienced a significant decline in revenues resulting in 2020 being the company's worst year, dropping to as low as 5% of its 2019 revenues. This resulted in voluntary and involuntary furloughs and layoffs leaving the company at around 129 employees at the QBF.

Flight Centre re-opened the QBF to essential staff on August 27, 2020 and officially re-opened to all staff in 2022. While the company considered continuing participation in the Grow NJ program, it could not commit to maintaining the minimum job required to qualify for a job reset. Therefore, Flight Centre requests termination.

Staff has determined that Flight Centre has met the requirements for a COVID-related termination. Pursuant to the Board Memo dated February 10, 2021, all COVID-related terminations must be presented to the Members for approval.

**Recommendation:**

Consent to approve Flight Centre's request to terminate its Grow NJ Incentive Agreement effective 2020 pursuant to the COVID-Related Relief provisions the New Jersey Economic Recovery Act of 2020 (ERA), P.L.2020, c. 156, as amended by P.L. 2022, c. 134.

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

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Tim Sullivan, CEO

Prepared by: Marc Tomasini



## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** March 8, 2023

**SUBJECT:** **Direct Energy GP, LLC**  
Grow New Jersey Assistance Program ("Grow NJ") – COVID-Related  
Termination - P#40027 (PROD-00184346)

**Request:**

Approve the request of Direct Energy GP, LLC ("Direct Energy") 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, as amended by P.L. 2022, c. 134.

As a condition of approval, previously incentivized jobs under Direct Energy's Grow NJ Incentive Agreement will not be eligible incented jobs under the NRG Energy Grow NJ Incentive Agreement.

**Background:**

Direct Energy GP, LLC is a North American energy supplier of electricity, natural gas and related services. Its Qualified Business Facility ("QBF") is located in Woodbridge Township, NJ. In January 2021, Direct Energy was acquired in a stock sale by NRG Energy ("NRG") but continued operations as Direct Energy.

On December 9, 2014, the Members approved a maximum \$10.2 million 10-year Grow NJ award to incent the creation of 115 new, the retention of 276 retained Grow-eligible employees and the relocation to an existing 50,648 square foot non-industrial premises that would be refurbished as office space for its QBF, located in Woodbridge Township with an estimated capital investment of \$5.5 million. Direct Energy certified project completion on December 5, 2018 and was issued a tax credit for \$551,952 for the 2018 tax year. Annual reporting on the tax credits for 2019 has been completed and certified by Staff in the amount of \$480,452 and a request for certification was sent to Taxation. Annual reporting for 2020 is currently under review and a preliminary review of this report indicates that Direct Energy will be issued a tax credit for that year. In addition, Direct Energy has elected to suspend its 2021 tax year credit pursuant to the ERA COVID-19 relief measures.

Previously, on June 11, 2013, the Members approved NRG for a \$37.5 million Grow NJ award to retain 386 jobs and hire 150 new employees at the company's offices in West Windsor, New

Jersey. To date, the applicant has received \$9.2 million in tax credits. Currently, NRG employs 341 Full-Time jobs at its QBF, 38 of which are currently designated as “remote”. Subsequent to the acquisition, Direct Energy continued to operate the Woodbridge Township location and had intended to maintain the Woodbridge Township QBF throughout the remainder of the commitment duration.

On April 25, 2022, Direct Energy submitted its application for a COVID-Relief termination of its Grow NJ Incentive Agreement citing COVID-Related impacts.

### **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, as amended by P.L. 2022, c. 134, amended the Grow NJ law to allow businesses to terminate Grow NJ Incentive Agreements retroactively beginning with tax year 2020 “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.

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 Public Health Emergency on the business.

### **Direct Energy COVID-19 Impacts and Decisioning**

Prior to the onset of the COVID-19 Public Health Emergency, Direct Energy had approximately 298 full-time employees working at its QBF.

In March 2020, all non-essential employees began working remotely due to the COVID-19 Public Health Emergency. Direct Energy and NRG began returning their non-essential employees to their offices in June 2021 using a hybrid office/remote working policy. The return began with its executives and continued with other employee levels throughout the Summer and Fall of 2021. A hybrid approach remains in place across the employee base.

With hybrid structures in place for both the NRG West Windsor QBF and Direct Energy Woodbridge Township QBF, NRG recognized that it had more office space than was required for the number of in-person office staff and made a real estate decision to close the Woodbridge Township QBF in May of 2021. When Direct Energy ceased operations at its approved QBF, it resulted in an Event of Default under its Grow NJ Incentive Agreement. However, the COVID-19 relief provisions in the ERA, allow a company to terminate its Grow NJ Incentive Agreement with no recapture of previously issued tax credits. The employees that were working at the Woodbridge Township QBF completed the move from that location by the end of May 2022.

As the Woodbridge Township jobs had previously been encumbered by the Grow NJ incentive of Direct Energy, staff recommends that those jobs which relocate to NRG's QBF should not be eligible under the Grow NJ incentive of NRG. To ensure that the State will incentivize only the jobs originally bargained for under the NRG Grow, beginning 2021 EDA Staff will compare Direct Energy jobs that existed at the QBF at the end of the 2020 calendar year to those listed on the NRG annual job logs and any Direct Energy-sourced jobs will be ineligible. To effectuate this condition, language will be added to Direct Energy's termination letter, and NRG's Grow NJ Incentive Agreement will be amended to state that no former Direct Energy employees that worked at Direct Energy's QBF after January 1, 2020, will be deemed eligible.

Staff has determined that Direct Energy has met the requirements for a COVID-related termination. Pursuant to the Board Memo dated February 10, 2021, all COVID-related terminations must be presented to the Members for approval.

**Recommendation:**

Approve the request of Direct Energy GP, LLC 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, as amended by P.L. 2022, c. 134.

As a condition of approval, previously incentivized jobs under Direct Energy's Grow NJ Incentive Agreement will not be eligible incented jobs under the NRG Energy Grow NJ Incentive Agreement.



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Tim Sullivan, CEO

**Prepared by: Mark Chierici**

## **MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** March 8, 2023

**RE:** PROD-00310359 and related PROD-00301488  
Approval of Core Partner participation in the New Jersey Health + Life Science Exchange (“HELIX”) - the next step in the investment in the New Jersey Innovation and Technology HUB

### **Summary**

I request the Members approve the next step of the Strategic Innovation Center investment previously approved for this project. If approved, the equity investment in Downtown HUB Associates, LLC (“Downtown HUB”) – which will be terminated – will be replaced with a participation in the HELIX as a Core Partner subject to a Lease Agreement (Core Partner) between HELIX NB LLC and the Authority for 4,925 of useable square feet within the Innovation HUB (“Lease”). Participation as a Core Partner entails an irrevocable and unconditional obligation to pay basic rent as well as guaranty a proportionate percentage of any deficiencies in debt service, operating and programming expenses for the HUB.

### **Background**

#### *1. Project Description*

This building, H-1, is the first phase of the New Jersey Health + Life Science Exchange (“HELIX”), which is being developed in downtown New Brunswick, includes the construction of a 12-story, 573,400 square foot building which will be allocated as follows:

- 128,957 square feet for the Innovation HUB, which comprises 59,125 square feet of office space and modern collaboration space, full-service workspaces, wet and dry laboratories, conference facilities, food services and other amenities for innovation and startups, and office space for the Core Partners and other tenants
- 248,555 square feet for new research laboratories for Rutgers University’s translational research facility

- 180,142 square feet for a new medical education facility for the Rutgers Robert Wood Johnson Medical School.

NJ Innovation Associates Urban Renewal, LLC (“NJIA”) will own H-1. New Brunswick Development Corporation (“Devco”) is NJIA’s sole member.

NJIA will develop the building and will have two Master Lease Agreements. One will be with Rutgers for approximately 77% of the building for the translational research facility and medical educational facility. The other is with Helix NB LLC (“Helix”), the Innovation HUB’s landlord. Devco is also Helix’s sole member.

As contemplated at the time of the \$10 million Strategic Innovation Center Investment, the Authority would become a tenant of the building, subject to a later Board approval of whether to be a Core Partner and of the specific terms. Staff now requests approval to become a Core Partner, including the specific terms of the corresponding Lease. The Authority will be a Core Partner and tenant, leasing approximately 4,925 square feet of office space, and paying Basic and Additional Rent on an additional 2,865 square feet of common area allocated to the leased premises, equal to 7,790 square feet of Total Rental Space in the Lease. The other Core Partners are Rutgers University, RWJ Barnabas Health, Inc., Hackensack Meridian Health, Inc., and Middlesex County. Other identified tenants who are not core partners include Princeton University and Devco.

The City of New Brunswick has approved a redevelopment and site plan for H-1. Devco will develop H-1 on a 1.2-acre site on Block 17.01, Lot 1.03. The New Brunswick Housing Authority, New Brunswick’s redevelopment agency, has designated NJIA as the redeveloper for H-1, subject to an executed Redevelopment Agreement. Future phases at the HELIX are expected to include additional laboratory, office and residential development. Currently, the H-1 construction is estimated to be completed in the first quarter of 2026.

## 2. *Prior Board Actions*

### *a. Strategic Innovation Center Investment*

In December 2021, the Members approved investing \$10 million into Downtown HUB to support the development of the New Jersey Innovation and Technology HUB. Downtown HUB was created for the following purposes:

- To 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)
- To 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 the Operating Agreement acceptable to NJEDA,

- To engage in all other business activities of any nature relating to or involving the Property, subject to the terms of the Ground Lease

The \$10 million investment funded the payment of \$6 million required by the Purchase and Sale Agreement between Downtown HUB and New Brunswick Parking Authority prior to the delivery of title of the parcel and reimbursement of up to \$4 million to Devco, Downtown HUB and/or NJIA for Authority reviewed and approved predevelopment expenses, 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.

Downtown HUB includes 2 members: the Authority and Devco. The operating agreement includes the following conditions for the \$10 million investment:

- NJIA shall cause title to the parcel be placed in Downton HUB
- The Authority have a mortgage on the Property until it is deeded to Downtown HUB
- NJIA undertake the development of the Innovation HUB and to hire a community manager to lead the innovation programming, with the funding
- Require NJIA to commence construction within one year of completion of the final Project budget
- Require NJIA to achieve final building completion within five years of the commencement of construction
- DEVCO shall provide, or cause NJIA to provide, monthly written status reports
- NJIA or DEVCO provide to the Authority a monthly report which at a minimum will include details on monthly Project activity and financials and will meet with a designated Authority representative to discuss progress.
- The Authority will have the right to reasonably participate in the selection of the programming manager to support the Innovation HUB.
- Upon the Ground Lease expiration or Downtown HUB dissolution (other than as a result of an uncured Event of Non-Compliance), require Downtown HUB to convey the Property to NJIA for \$1.00

- Require 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.
- Require NJIA to provide the Authority indemnification as outlined in the operating agreement.
- Provide the Authority a rent credit equivalent to \$10 million in the leased premises

As of February 9, 2023, the Authority has disbursed the \$10 million investment for property and project expenses as outlined in the operating agreement. The Authority also recovered 4.5% of administrative costs from the Strategic Innovation Center appropriation for the management of this investment and project. As of the date of this memo, the property has not been transferred to NJIA and the Authority's mortgage remains in place.

*b. Aspire Incentive Approval*

In February 2023, the Members approved the Aspire tax credit incentive in the amount of \$271,186,902 to develop H-1. The following table outlines the uses and sources for the project:

Uses	Total Development Costs	Eligible Aspire Costs
Acquisition	\$22,936,000	\$0
Hard construction costs including FFE	\$626,172,374	\$626,172,374
Professional Services	\$49,944,180	\$41,205,343
Financing and Other Soft Costs	\$38,709,816	\$27,631,674
Development Fee	\$16,125,300	\$0
<b>Total Uses</b>	<b>\$753,887,670</b>	<b>\$695,009,390</b>

  

Sources	Amount	Type
Tax Exempt Bonds	\$399,896,011	Permanent
Taxable Bonds	\$47,723,317	Permanent
Tax Credit Bonds	\$46,268,342	Bridge Financing
Equity	\$260,000,000	Equity
<b>Total Sources</b>	<b>\$753,887,670</b>	

The Authority's \$10 million Strategic Innovation Center investment in Downtown HUB is not a project source of funds; as detailed above, the investment was previously used primarily for the land purchase, site preparation and design and engineering costs.

As required by the Aspire program, staff determined that the completed project is anticipated to yield the State a present value net benefit of \$340,449,009.

### 3. *New Investment Structure*

As stated above, Staff is recommending that the Authority continue its investment in Downtown HUB by replacing the Authority's equity investment in Downtown HUB with participation in the HELIX as a Core Partner. As described above, the project is funded by Aspire-backed tax credit bonds, Rutgers equity contribution, and other tax-exempt and taxable bonds. The tax-exempt and taxable bonds are paid by allocating the debt service proportionally as the basic rent from the Core Partners (see Section 4.a below). Accordingly, the tax-exempt and taxable bond issuance by the Middlesex County Improvement Authority will describe the Core Partner structure and will identify and describe each Core Partner (including EDA), which includes providing financial statements for each Core Partner.

In lieu of the rent credit provided for in the Downtown HUB operating agreement, bond proceeds will be used to fund a \$10 million reimbursement fund (see Section 4.g below), which Helix and Devco initially will use to pay the Authority's obligations under the Lease (see Section 4 below) and the Guaranty (see Section 5 below).

The tax exempt and taxable bond issuance by the Middlesex County Improvement Authority will describe the Core Partner structure, identify and describe the Core Partners, and include a financial disclosure for each Core Partner in the Innovation HUB.

As anticipated, the investment structure is revised from the initial investment approval; however, the public purpose of the building – the Rutgers translational research facility, the Rutgers Robert Wood Johnson Medical School, and the Innovation HUB – remains the same. This facility will support NJ's leadership position in the life science industry.

### 4. *The Lease*

#### *a. Basic and Additional Rent*

The Authority will execute a thirty-year lease with Helix NB LLC for 4,925 useable square feet of office space, and paying Basic and Additional Rent on an additional 2,865 square feet of common area (for a total of 7,790 square feet) allocated to the leased premises in the first year as follows:

Item	SSF		RSF		Total
Basic Rent	\$45	x	7,790	=	\$350,550
Additional Rent (OpEx)	\$12	x	7,790	=	\$93,480
<b>First Year Annual Cost</b>	<b>\$57</b>	<b>x</b>	<b>7,790</b>	<b>=</b>	<b>\$444,030</b>

Basic Rent is determined by the Authority's proportionate share of the building's bond financing which will be fixed for the 30-year lease term. Additional Rent includes: (i) the Authority's proportionate share of the buildings operating costs which will increase/decrease annually based on the actual operating costs of the Innovation HUB, (ii) payment in lieu of taxes, and (iii) "all

other amounts, liabilities and obligations which” the Authority agrees to pay the landlord under the Lease.

Basic and Additional Rent and any of the Authority’s Guaranty obligations will be initially paid by the \$10 million reimbursement fund. The reimbursement fund and the Guaranty are discussed in more detail in Sections 4.g and 5 below.

The following chart summarizes the Authority’s estimated out of pocket cost under the Lease modeled in the “best” and “worst” cases discussed more fully in Section 7 below:

	Yrs 12-30 Worst	Yrs 24-30 Best Case
Undiscounted Rent	\$6,393,478	\$2,173,003
Undiscounted Addit. Rent	\$2,654,744	\$1,555,323
	<b>\$9,048,222</b>	<b>\$3,728,326</b>
Years	<b>19</b>	<b>7</b>
Annual Cost	<b>\$476,222</b>	<b>\$532,618</b>

  

	Yrs 12-30 Worst Case	Yrs 24-30 Best Case
Present Value of Rent	\$2,710,850	\$704,282
Present Value of Addit. Rent	\$1,091,383	\$531,126
	<b>\$3,802,233</b>	<b>\$1,235,407</b>
Years	<b>19</b>	<b>7</b>
Annual Cost	<b>\$200,118</b>	<b>\$176,487</b>

The two cases assume the following: the \$4 SF payment in lieu of taxes increases 10% every six years until the end of the Lease term, annual expenses start at \$4 SF increasing annually at 4%, and a discount rate of 4.21%.

Because Core Partner rent pays the bond debt service, the Lease provides that the Authority’s obligation to pay Basic Rent is absolute and unconditional “whether or not the Project is completed, used or the Project is occupied by the Tenant or available for use or occupancy by the Tenant.” Rent is due “[n]otwithstanding any dispute between Tenant and Landlord.”

The Basic Rent obligation commences when the bond closing occurs, currently estimated as March 29, 2023.

*b. Construction Step-In Rights*

In its Master Lease, Rutgers has step-in rights to complete the project if the NJIA has not substantially completed the project by 2026 (absent unavoidable or tenant delays). If Rutgers does not exercise its step-in rights, the Authority likewise has a right to step in to complete the project.

*c. Purchase Option*

At least 120 days prior to the expiration of the Lease term, the Authority may exercise a one-time option to purchase the leased premises for \$1.00 (accomplished through air rights and easements). The Lease does not provide for any lease extensions. The Authority may not assign or otherwise transfer its purchase option.

*d. Net Lease*

The Lease “shall be deemed and construed to be an absolutely net lease” and “Tenant shall pay all costs and expenses connected with the occupancy and operation” of the leased premises.

*e. Remedies for a Landlord’s Default*

The Authority’s remedy for a landlord’s default is limited. While bond financing remains outstanding, EDA cannot terminate the Lease. There is no recourse against the Landlord. All obligations “are solely obligations payable out of the Demised Premises and are compensable solely therefrom.” If, however, the Landlord is in default of its obligations and EDA’s premises are uninhabitable, EDA can make a demand of the Landlord to be paid from the landlord’s capital reserve account for repairs and replacements necessary to make the premises inhabitable again.

Staff has been informed that NJIA is discussing a management agreement with Rutgers, which will occupy a majority of the HELIX space with high profile space. Staff anticipates that Rutgers will ensure the management Due to its large footprint

*f. Operational Cash Distributions*

In consideration for providing the Project Support and Guaranty, the Authority will receive its proportionate share of Innovation HUB revenue (17%), which is available after: “(i) payment of all debt service allocable are due and payable, (ii) payment of all HUB Costs that are due and payable, (iii) . . . any reserves that Landlord believes is advisable for the operation, programming and maintenance of the HUB.”

*g. Reimbursement Fund*

The lease requires that Helix and NJIA establish a reimbursement fund to fulfill the obligation from the Downtown HUB operating agreement for the \$10 million investment to “be reimbursed to NJEDA exclusively by applying the outstanding amount of the NJEDA Funding against basic rent payments owed by NJEDA to NJIA pursuant to the contemplated future NJEDA Lease as

such base rental payments become due.” As outlined in Section 4.a and 5 of this memorandum, the reimbursement fund also will be used to satisfy NJEDA’s Basic and Additional Rent obligation under the Lease and any obligation NJEDA incurs under the Guaranty.

From bond proceeds, \$10 million will be deposited into an account for the “sole purpose of paying NJEDA’s monetary obligations under the NJEDA Office Lease and the [Guaranty], to the extent that monies remain available in the NJEDA Reimbursement Fund.” While the account will be created pursuant to an agreement between Devco, Helix, and the bank that will hold the reimbursement fund, the Lease provides the limited uses of the reimbursement and notice required to NJEDA.

*h. Other Pertinent Lease Clauses*

The Lease also includes the following clauses:

- The Core Partners form an Operating Committee with the right to review and approve the budget, improvements and equipment acquisition, and manager for the Innovation HUB.
- Landlord has no obligation to pay utility charges for the building until it receives the payment from the Innovation HUB tenants
- Landlord shall not be obligated in any way to maintain, alter or repair the leased premises
- Developer is required under the Master Lease to make all repairs and replacements to the structural columns and beams, the exterior walls and the exterior windows of the Building; provided, however, if such repairs and replacements are necessitated by the intentional acts or negligence of Tenant or Tenant’s Visitors, then Tenant shall reimburse Landlord, upon demand, for the reasonable cost thereof, and Landlord will then reimburse Developer for such cost
- Tenant agrees to make no claim against Landlord (a) for any damage to, or loss (by theft or otherwise) of, or loss of use of, any property of Tenant or of any other person, or (b) for business interruption or consequential damages, it being understood that Tenant assumes all risk in connection therewith, and Landlord shall not be liable therefor, for any reason, including the negligence of Landlord, its employees, agents, servants or invitees, or the breach by Landlord of any provision of this Lease.
- Landlord may withhold, delay or condition its consent in response to the Authority’s request to sublet the leased premises except with regard to any assignment or transfer to another State entity.
- If there is a casualty and/or condemnation in the building making the leased premises uninhabitable, the obligation to pay Basic and Additional Rent is not abated unless the

bonds are paid and the lease is terminated.

#### 5. *The Guaranty*

As a Core Partner in the Innovation HUB, the Authority will agree to provide a guaranty to Helix and the Middlesex County Improvement Authority for the Authority's proportionate share (17%) of the Innovation HUB space that "will be rented or licensed by individual or business users that otherwise qualify and are approved for such membership" by the Innovation HUB manager. The Guaranty includes:

- 17% of the Innovation HUB projected revenues that would be used to pay programming, operating and maintenance costs of, and to otherwise support, the Project
- 17% of the Innovation HUB Basic Rent (i.e., principal and interest payments of the bonds to MCIA including any redemption premium and interest due on the bonds)

The Authority's exposure under the Guaranty will be reduced by the operational cash distributions provided in the Lease and is outlined in Section 4.f. above.

#### 6. *Termination of Downtown HUB*

As part of entering in the Lease, Downtown HUB will be dissolved and the obligations of NJIA and Devco, and Authority's rights to protect its investment through project completion will be included in the Lease or related documents as described in Exhibit A to this memo.

#### 7. *The Authority's Financial Exposure Under the Guaranty and the Lease*

##### a. *Estimated Annual Guaranty Exposure*

The following chart summarizes the assumptions Devco has provided regarding the potential exposure to the Authority for a shortfall of income from operating the Innovation HUB, assuming a 90% occupancy stabilized:

<b>Innovation HUB</b>	<b>SSF</b>		<b>SF</b>		<b>Total</b>
Basic Rent	\$45.00	x	59,125	=	\$2,660,625
Additional Rent	\$12.00	x	59,125	=	\$709,500
Program Management	\$30.00	x	59,125	=	\$1,773,750
<b>Total HUB Annual Costs</b>					<b>\$5,143,875</b>
NJEDA Percentage				x	17%
<b>NJEDA's 1st Year Estimated Exposure</b>				=	<b>\$874,459</b>

The Innovation HUB occupancy costs will increase/decrease annually as the building and program management costs increase/decrease.

##### b. *Estimating the Guaranty and Lease Financial Exposure for the Lease Term*

###### i. *"Worst" Case*

To assist the Members in assessing the risk of the Guaranty, staff performed the following analysis to assess the depletion of the \$10 million reimbursement fund availability to pay the Lease Basic and Additional Rent and any other obligations under the Guaranty assuming the following:

- The Innovation HUB space remains unoccupied and without income for the Lease term. In this instance, the \$30 square foot program management cost will \$0 SF
- The \$10 million reimbursement fund will grow at 2.5% a year. The initial balance of the reimbursement fund includes 2.5% interest accumulated annually for 2 years, to account for the construction period
- The payment in lieu of taxes start at \$4 SF and increases 10% every 6 years until the end of the Lease term
- The building's operating expenses start at \$8 SF and increase annually at 4%
- Apply a 4.21% discount to calculate the present value of the financial exposure under the Lease and Guaranty for the balance of the Lease term.

Using these assumptions, the reimbursement fund will be depleted during Year 12, leaving an estimated out-of-pocket financial exposure to the Authority as follows:

<b>Undiscounted Exposure for Years 12-30</b>			
	<b>Basic Rent</b>	<b>Additional Rent</b>	<b>Total</b>
Leased Premises	\$6,393,478	\$2,654,744	\$9,048,222
Guaranty Exposure	\$8,591,154	\$3,491,857	\$12,083,011
<b>Total</b>	<b>\$14,984,632</b>	<b>\$6,146,601</b>	<b>\$21,131,233</b>

<b>Present Value Exposure for Years 12-30</b>			
	<b>Basic Rent</b>	<b>Additional Rent</b>	<b>Total</b>
Leased Premises	\$2,710,850	\$1,091,383	\$3,802,233
Guaranty Exposure	\$3,706,603	\$1,444,459	\$5,151,063
<b>Total</b>	<b>\$6,417,453</b>	<b>\$2,535,842</b>	<b>\$8,953,296</b>

Note: Discount Rate 4.21%

Staff believes this worst case will be mitigated because the Core Partners have the right (as the Operating Committee) to approve budgets and select the manager of the Innovation HUB, and the Core Partners and Landlord will most likely intervene to repurpose the Innovation HUB space to another use to minimize the Core Partners' Guaranty exposure.

## ii. "Best" Case

In addition, Staff analyzed the best case for the Innovation HUB operations and NJEDA's exposure under the Guaranty, which includes the following assumptions:

- The Year 1 Innovation HUB manager cost of \$30 per square foot increases annually at 4%.
- Innovation HUB occupancy of 40%,60% and 80% in the first three years, and 90% for the balance of the 30-year Lease term
- The \$10 million reimbursement fund will grow at 2.5% a year. The initial balance of the reimbursement fund includes 2.5% interest accumulated annually for 2 years, to account for the construction period
- The payment in lieu of taxes start at \$4 SF and increases 10% every 6 years until the end of the Lease term
- The building's operating expenses start at \$8 SF and increase annually 4%
- The Innovation HUB's income will increase at 3% a year
- Apply a 4.21% discount to calculate the present value of the financial exposure under the Lease and Guaranty for the balance of the Lease term

The financial model produced the following financial consequences:

- The \$10 million reimbursement fund is estimated to be depleted in Lease year 24
- Guaranty payments totaling \$1.824 million may be made from the reimbursement fund
- Over the Lease term, the Authority may receive net cash totaling \$8,504,435, or \$3,101,289 in today's dollars.

Assuming depletion of the \$10 million reimbursement fund in Lease Year 24, the Authority may have the following estimated out of pocket financial exposure through the end of the Lease term:

<b>Undiscounted Exposure for Years 24-30</b>			
	<b>Basic Rent</b>	<b>Additional Rent</b>	<b>Total</b>
Leased Premises	\$2,173,003	\$1,555,323	\$3,728,326
Guaranty Exposure	\$0	\$0	\$0
<b>Total</b>	<b>\$2,173,003</b>	<b>\$1,555,323</b>	<b>\$3,728,326</b>

<b>Present Value Exposure for Years 24-30</b>			
	<b>Basic Rent</b>	<b>Additional Rent</b>	<b>Total</b>
Leased Premises	\$704,282	\$531,126	\$1,235,407
Guaranty Exposure	\$0	\$0	\$0
<b>Total</b>	<b>\$704,282</b>	<b>\$531,126</b>	<b>\$1,235,407</b>

Note: Discount Rate 4.21%

#### 8. *Staff Recommendation*

Staff recommends the Members approve the new investment structure (Lease and Guaranty) for the following reasons:

- The project is consistent with Governor Murphy's economic development strategy of creating and supporting jobs in the life science sector by providing the first "home" for early-stage life science companies
- The Innovation HUB will include the involvement of the State's leading public research university, Rutgers
- The Rutgers Medical School will allow research from discovery to patient bed side in one location and assure the support of the pipeline of doctor's are educated within the State. It has been noted that the state could be short 2,500 to 2,800 doctors by next year, and the U.S. could have a deficiency of nearly 120,000 physicians by 2030, the result of a growing, aging population, according to the Association of American Medical Colleges.
- The Innovation HUB will complement the Authority's Incubator at the New Jersey Bioscience Center for start-up life science companies
- The Authority's presence in the Innovation HUB will demonstrate the State's commitment to support the life-science business sector and provides the Authority early and immediate contact to assist life science business grow within the State
- In the "worst case," the Authority's estimated financial exposure, on a net present value basis (i.e., in today's dollars), under the Guaranty between Lease Years 12 and 30 is approximately \$5.151 million or \$271,108 per year for 19 years
- In the "worst case," the Authority's estimated total out of pocket exposure in today's dollars under the Lease and Guaranty is approximately \$8.953 million or \$471,226 per year for the period between Lease Years 12 and 30.
- In the "best case," the reimbursement fund may be depleted in Lease Year 24, the Authority may receive net cash over the Lease term totaling approximately \$8.5 million or \$3.1 million in today's dollars, and may have the financial exposure in Lease Years 24 through 30 of \$1.235 million or \$176,487 per year, in today's dollars.

Because any remaining obligations of NJIA under the Downtown HUB operating agreement and Authority's rights to protect its investment in Downtown HUB will be included in the Lease and other documents, staff also request the Members authorize the dissolution of Downtown HUB.

Attached as Exhibit B and C to this memo are the Lease and Guaranty, which are in substantially final form. The final agreements may be subject to revisions, although the basic terms and conditions will remain consistent with the current form of agreements.

**Recommendation**

I request the Members approve the next step of the Strategic Innovation Center investment previously approved for this project: replacing the equity investment in Downtown HUB Associates, LLC (“Downtown HUB”) – which will be terminated –with a participation in the HELIX as a Core Partner subject to a Lease Agreement (Core Partner) between HELIX NB LLC and the Authority for 4,925 of useable square feet within the Innovation HUB (“Lease”). Participation as a Core Partner entails an irrevocable and unconditional obligation to pay basic rent as well as guaranty a proportionate percentage of any deficiencies in debt service and programming and operating expenses for the HUB the Project Support and Guaranty Agreement provided by the Authority to HELIX NB LLC and Middlesex County Improvement Authority. Final terms of the agreements, and the terms of any ancillary agreements or documents, are subject to approval by the Chief Executive Officer.



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Tim Sullivan, CEO

Prepared by: Juan Burgos and Kathleen Coviello

Exhibits: A: Chart of Downtown HUB Operating Agreement Provisions  
B: Lease  
C: Guaranty

Exhibit A

Operating Agreement Provisions		How Addressed in the Transaction
Background	NJEDA will have the right to reasonably participate in the selection of the programming manager to support the Innovation Center.	Lease section 28.8 provides that Core Partners will have one vote on the operating committee to decide the following: (a) the programming budget for the HUB, b) future major capital improvements and equipment acquisitions for the HUB, (c) disposition of any ownership interest in the HUB, and (d) retention of the manager of the HUB
Background	[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.	Included in Lease section 28.10
Sec. 2.3	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.	Under 28.18 of the Lease, Landlord and Tenant agree that \$10 million will be deposited into a reimbursement fund and that monies payable by Tenant under the lease or Guaranty may be paid from the reimbursement fund . . . until the reimbursement funds governed thereby are depleted.
Secs. 1.3, 2.4(a), 2.4(c)(iii), 2.4(c)(v), 7.1	The property for the project would be deeded to Downtown HUB and Downtown HUB would ground lease the property to NJIA for nominal consideration; the ground lease will include the following clauses: (1) clause deeding the property to NJIA upon the earlier of the dissolution of the company or the end of the ground lease term; (2) The Company deed the property to NJIA at least one year prior to the expiration of the Core Partner Leases, but not later than the dissolution of the Company; Upon dissolution of the Company, the land will be deed to NJIA for \$1	As permitted by Section 4.1 of the Downtown HUB operating agreement, NJEDA will consent to assign the purchase and sale agreement to NJIA upon finalizing the Lease and Guaranty.
Sec. 2.4(a)(iii)	Until the property is deeded to the Company, NJEDA will have a mortgage	NJEDA's mortgage will be released when the property is transferred to NJIA
Sec. 2.4.(b)	Prior to the Company receiving title to the property, Devco to provide a survey, approved subdivision plan or deed and title insurance commitment for review	As permitted by Section 4.1 the Downtown HUB operating agreement, NJEDA will consent to assign the purchase and sale agreement to NJIA upon finalizing the Lease and Guaranty.
Sec. 2.4(c)(i)	Devco is to develop the Innovation HUB and hire and fund a community manager to lead the innovation programming	Lease section 28.8 provides that Core Partners will have one vote on the operating committee to decide the following: (a) the programming budget for the HUB, b) future major capital improvements and equipment acquisitions for the HUB, (c) disposition of any ownership interest in the HUB, and (d) retention of the manager of the HUB
Sec. 2.4(c)(ii)	NJIA is to commence construction within 24 months of the date of the Operating Agreement	Under Lease section 28.13, Landlord shall require NJIA to commence construction of the HUB and Building

Operating Agreement Provisions		How Addressed in the Transaction
		Office Space within one year of completion of the final Project budget (which completion shall be by December 17, 2023) and to achieve final Building completion within five years of the commencement of construction
Sec. 2.5	If the Innovation HUB does not receive a certificate of occupancy within 102 months of date of the Operating Agreement, The Company shall at its option either deliver a quit claim deed to NJEDA or repay NJEDA the property purchase price, subject to NJEDA's board approval and its sole discretion	Under its Master Lease, Rutgers will have the ability to complete the project if NJIA and/or Devco are unable to. In Lease sections 7.6 and 7.7, NJEDA retains secondary step in rights after Rutgers
Sec. 2.9	Devco to provide NJEDA with monthly written status reports and have prepared an annual audited statement	
Sec. 2.10	In the event of non-compliance of 2.4(a)(ii), 2.4(b), 2.4(c)(ii) or 2.9, which is not cured, NJEDA may withhold funding and has the right to purchase Devco's interest for \$1.00	Under its Master Lease, Rutgers will have the ability to complete the project if NJIA and/or Devco are unable to do so.  Under Lease sections 7.6 and 7.7, NJEDA retains secondary step in rights after Rutgers.
Sec. 2.11	NJIA to hold back 5% of Devco's development fee until the project receives a temporary certificate of occupancy	Lease section 27.3 provides that Devco will forego \$4 million of its developer fee and will be paid on a proportional basis according to the monthly construction draw percentage
5.4(c)	Devco shall be responsible for injuries or death to any person for any act, omission, negligence, fault or default of the Company or Devco and any Company or Devco subcontractors, or their employees, agents, servants, independent contractors or subcontractors retained by DEVCO or Company	This is not a provision granted by a Landlord to a Tenant, and this provision allocated risk from the passive investor, NJEDA, to the active managing member, Devco. This provision is no longer required.
5.4(d)	Devco agrees to defend, indemnify and hold harmless for any claims, judgments and liabilities for any act, omission, negligence, fault or default of the Company or Devco and any Company or Devco subcontractors, or their employees, agents, servants, independent contractors or subcontractors retained by DEVCO or Company	This is not a provision granted by a Landlord to a Tenant, and this provision allocated risk from the passive investor, NJEDA, to the active managing member, Devco. This provision is no longer required.
9.2	Devco and the Company are to comply with State non-discrimination requirements.	Included in the Lease at section 28.16
9.3	Devco and the Company are to comply with State prevailing wage	Included in the Lease at section 28.17
9.4	Devco and the Company to comply with State record keeping requirements	Included in the Lease at section 28.18

Exhibit A

Operating Agreement Provisions		How Addressed in the Transaction
Background	NJEDA will have the right to reasonably participate in the selection of the programming manager to support the Innovation Center.	Lease section 28.8 provides that Core Partners will have one vote on the operating committee to decide the following: (a) the programming budget for the HUB, b) future major capital improvements and equipment acquisitions for the HUB, (c) disposition of any ownership interest in the HUB, and (d) retention of the manager of the HUB
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Secs. 1.3, 2.4(a), 2.4(c)(iii), 2.4(c)(v), 7.1	The property for the project would be deeded to Downtown HUB and Downtown HUB would ground lease the property to NJIA for nominal consideration; the ground lease will include the following clauses: (1) clause deeding the property to NJIA upon the earlier of the dissolution of the company or the end of the ground lease term; (2) The Company deed the property to NJIA at least one year prior to the expiration of the Core Partner Leases, but not later than the dissolution of the Company; Upon dissolution of the Company, the land will be deed to NJIA for \$1	As permitted by Section 4.1 of the Downtown HUB operating agreement, NJEDA will consent to assign the purchase and sale agreement to NJIA upon finalizing the Lease and Guaranty.
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Sec. 2.9	Devco to provide NJEDA with monthly written status reports and have prepared an annual audited statement	
Sec. 2.10	In the event of non-compliance of 2.4(a)(ii), 2.4(b), 2.4(c)(ii) or 2.9, which is not cured, NJEDA may withhold funding and has the right to purchase Devco's interest for \$1.00	Under its Master Lease, Rutgers will have the ability to complete the project if NJIA and/or Devco are unable to do so.  Under Lease sections 7.6 and 7.7, NJEDA retains secondary step in rights after Rutgers.
Sec. 2.11	NJIA to hold back 5% of Devco's development fee until the project receives a temporary certificate of occupancy	Lease section 27.3 provides that Devco will forego \$4 million of its developer fee and will be paid on a proportional basis according to the monthly construction draw percentage
5.4(c)	Devco shall be responsible for injuries or death to any person for any act, omission, negligence, fault or default of the Company or Devco and any Company or Devco subcontractors, or their employees, agents, servants, independent contractors or subcontractors retained by DEVCO or Company	This is not a provision granted by a Landlord to a Tenant, and this provision allocated risk from the passive investor, NJEDA, to the active managing member, Devco. This provision is no longer required.
5.4(d)	Devco agrees to defend, indemnify and hold harmless for any claims, judgments and liabilities for any act, omission, negligence, fault or default of the Company or Devco and any Company or Devco subcontractors, or their employees, agents, servants, independent contractors or subcontractors retained by DEVCO or Company	This is not a provision granted by a Landlord to a Tenant, and this provision allocated risk from the passive investor, NJEDA, to the active managing member, Devco. This provision is no longer required.
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9.3	Devco and the Company are to comply with State prevailing wage	Included in the Lease at section 28.17
9.4	Devco and the Company to comply with State record keeping requirements	Included in the Lease at section 28.18

## LEASE AGREEMENT (CORE PARTNER)

**LEASE AGREEMENT** (this “Lease”), made as of \_\_\_\_\_, 2023, between **HELIX NB LLC** (the “Landlord”), a New Jersey limited liability company, having an address c/o New Brunswick Development Corporation, 120 Albany Street Plaza, Tower One, Seventh Floor, New Brunswick, New Jersey 08901, and **NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY** (“NJEDA” or the “Tenant”), an instrumentality of the State of New Jersey, having an address at 36 West State Street, P.O. Box 990, Trenton, New Jersey 08625.

## PRELIMINARY STATEMENT

NJ Innovation Associates Urban Renewal LLC, a New Jersey limited liability company (“Developer” or “NJIA”), is the owner of that certain real property known as Block 17.01, Lot 1.03 (the “Land”) on the tax maps of the City of New Brunswick, as more particularly described on Schedule A annexed hereto. Developer has been designated by the City of New Brunswick as redeveloper to develop and construct on the Land a multi-story structure containing approximately 570,000 +/- square feet (the “Building”) that will consist of the various components such as (a) the Rutgers Translational Research Facility, (b) the Rutgers Robert Wood Johnson Medical School, (c) the New Jersey Innovation HUB, located on floors 9 and 10 of the Building, including a modern collaboration space, full-service workspaces, wet and dry laboratories, conference facilities, food services and other amenities (the “HUB”), and (d) the Building Office Space (as defined below), the latter of which the Demised Premises (defined below) is a part. Each of the various components of the Building are three-dimensional air rights estates, which are separate legal tax parcels, including the Demised Premises (each, an “Estate” and collectively, the “Estates”).

The Demised Premises constitutes a portion of the office space in the Building, which, in total, is comprised of (a) a group of certain individual offices in the Building for each of a group of entities referred to as the Core Partners: namely, Rutgers, The State University of New Jersey (“Rutgers”), RWJ Barnabas Health, Inc., Hackensack Meridian Health, Inc., New Jersey Economic Development Authority and Middlesex County, (b) office space for Princeton University and (c) office space for New Brunswick Development Corporation ((a), (b) and (c), collectively, the “Building Office Space”).

Because of the vertical and integrated nature of the Building and the Building having been apportioned into Estates, Developer executed and recorded in the Office of the Clerk of Middlesex County, State of New Jersey that certain Declaration of Covenants, Restrictions and Reciprocal Easements dated \_\_\_\_\_, 2023 (the “Declaration”), which subjects all of the Estates to the terms and condition thereof in order to (a) ensure the development and operation of the Estates in an efficient and harmonious manner and (b) create as appurtenances to and restrictions on each of the Estates certain covenants, restrictions and reciprocal easements as more particularly set forth in the Declaration, which covenants, restrictions and easements run to the benefit of, and bind the respective Estates, and the owners and lessees of the Estates or any portion thereof.

Pursuant to the terms of that certain Master Lease dated as of \_\_\_\_\_, 2023 (the “Master Lease”) between Developer, as Lessor, and Landlord, as Lessee, Landlord leases from Developer, inter alia, the Building Office Space.

Tenant desires to lease from Landlord the NJEDA Estate, as more particularly described on Schedule A-1 attached hereto and made a part hereof, which contains approximately 4,925 square feet of office space (the “Demised Premises”) on the terms and conditions set forth in this Lease. Further, for the purposes of clarity as to the mutual intention of the Parties, the Basic Rent amount has been established taking into consideration Tenant’s rights to use areas of the Building outside of the Demised Premises as set forth in the Declaration (“Declaration Areas”), with the undivided proportional interest in the Declaration Areas allocated to the Demised Premises being 10.6%, as set forth in the Declaration. With the overall square footage of the Declaration Areas being 27,118 square feet, Tenant’s undivided proportional interest in such space is equal to 2,865 square feet (the “Proportional Declaration Areas Space”), resulting in an effective per square foot Basic Rent amount calculated by dividing the Basic Rent amount by the sum of the square footages of the Demised Premises and the Proportional Declaration Areas Space, such sum being 7,790 sf and referred to hereinafter as the “Total Rental Space”.

**NOW, THEREFORE**, Landlord and Tenant agree as follows:

## **ARTICLE I** **DEFINITIONS**

Section 1.1 As used in this Lease, the following terms have the following respective meanings:

Account Bank: defined in Section 27.2(b).

Additional Rent: defined in Section 4.2.

Approved Plans: the detailed plans, specifications and drawings including, construction drawings, for the construction of the Improvements which are on file at Landlord’s office; provided, however, that the term Approved Plans shall at all times refer to the most current version of the Approved Plans approved by Developer.

Assignment Agreement: the Assignment Agreement dated as of the date of this Lease, by and between Landlord and Trustee, to be delivered contemporaneously with the delivery hereof.

Authority: the Middlesex County Improvement Authority, a public body corporate and politic constituting an instrumentality of the State.

Available Cash from Operations: defined in Section 3.5.

Basic Rent: the amounts set forth in Schedule B attached hereto and made a part hereof, as the same may be adjusted as provided herein, consisting of a Principal Portion and Interest Portion, and, upon acceleration or prepayment of Rent pursuant to an extraordinary redemption as provided for in the Bond Indenture, shall mean the payment of all or a portion of the Redemption Price determined as provided in Sections 4.5, 4.6 and 4.7 hereof.

Basic Rent Payment Dates: that certain day of each consecutive calendar month so designated as such in Schedule B attached hereto.

Bond Counsel: \_\_\_\_\_, or any attorney at law or firm of attorneys of nationally recognized standing in matters pertaining to the Federal tax exemption of interest on debt obligations issued by states and their political subdivisions, designated by Landlord, and reasonably acceptable to the Trustee.

Bond Indenture: the Trust Indenture, dated as of the Commencement Date, by and between the Authority and the Trustee, pursuant to which the Authority has issued the Bonds, as the same may be modified from time to time in accordance with its terms.

Bonds: the Authority's \_\_\_\_\_ bonds, in the aggregate principal amount as shall be determined on the Commencement Date issued by the Authority pursuant to the Bond Indenture, the proceeds of which will be loaned to the Landlord pursuant to the Loan Agreement to finance a portion of the costs of construction of the Building.

Building: defined in the Preliminary Statement.

Building Holidays: Saturday, Sunday, New Year's Day, President's Day, Martin Luther King Day, Juneteenth, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day after Thanksgiving and Christmas Day.

Building Hours: \_\_\_\_ AM to \_\_\_\_ PM, \_\_\_\_\_ through \_\_\_\_\_, and \_\_\_\_ AM to \_\_\_\_ PM, Saturday except for Building Holidays. **[TO BE DETERMINED]**

Building Improvements: all of the materials comprising the principal structure of the Building and any ancillary structure requiring a foundation including the roof, but excluding the Interior Improvements.

Building Office Space: defined in the Preliminary Statement.

Capital Reserve Account: defined in Section 27.2(a).

Capital Reserve Amount: defined in Section 6.8.

Change: defined in Paragraph 3(a) of Schedule D annexed hereto.

Change Order: defined in Paragraph 3(a) of Schedule D annexed hereto.

Closing: defined in Section 3.4(d)(iii).

Code: defined as the federal Internal Revenue Code of 1986, as amended.

Commencement Date: the date on which the Bonds are issued by the Authority.

Committee Member and Committee Members: defined in Section 28.8.

Completion Date: defined in Section 7.6.

Construction Agreements: collectively, the Developer's agreements with the architect, site civil engineer and construction manager for the Improvements and any and all other contracts and

agreements for the provision of work, materials or other services in connection with the development and construction of the Improvements.

Core Partners: Rutgers, RWJ Barnabas Health, Inc., Hackensack Meridian Health, Inc., New Jersey Economic Development Authority, and Middlesex County.

Costs: defined in Paragraph 4(b) of Schedule D annexed hereto.

Declaration: defined in the Preliminary Statement.

Declaration Areas: defined in the Preliminary Statement.

Demised Premises: defined in the Preliminary Statement.

DEVCO: New Brunswick Development Corporation, a New Jersey nonprofit corporation and the sole member of the Landlord.

Developer or NJIA: defined in the Preliminary Statement.

DHA: defined in Section 28.18(a)(i).

DHA Operating Agreement: defined in Section 28.18(a)(i).

Environmental Laws: any applicable federal, state, local or other law, statute, ordinance, rule, regulation, environmental permit, judgment, order, decree, license, or other binding requirement of, or binding agreement with, any governmental body, 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 or 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.

Escrow Account: defined in 28.18(b).

Escrow Agent: defined in 28.18(b).

Escrow Agreement: defined in 28.18(b).

Escrow Funds: defined in 28.18(b).

Estate and Estates: defined in the Preliminary Statement.

Event of Default: defined in Article 19.

Event of Extraordinary Redemption: an Event of Extraordinary Redemption as described in Section \_\_\_\_\_ of the Bond Indenture.

Excusable Delay: any delay caused by governmental action, or lack thereof; shortages or unavailability of materials and/or supplies; labor disputes (including, but not limited to, strikes,

slowdowns, job actions, picketing and/or secondary boycotts); fire or other casualty; delays in transportation; acts of God; directives or requests by any governmental entity, authority, agency or department; any court or administrative orders or regulations; adjustments of insurance; acts of declared or undeclared war, public disorder, riot or civil commotion; the existence of any viral, bacterial or other pathogenic outbreak, epidemic, pandemic or other rampant proliferation of any other community spread disease (including but not limited to, Coronavirus Disease 2019 (COVID-19)) which results in: (i) an actual shortage of labor or products at the Demised Premises when any construction work is being performed under this Lease, (ii) the inability of Landlord or Tenant, or their respective contractors to access or perform any construction work on the Demised Premises, (iii) the closure of governmental agencies or delays in the issuance of permits necessary for any construction work being performed on the Demised Premises (iv) the imposition of restrictions by governmental or quasi-governmental agencies on the number of persons able to perform construction work on the Demised Premises or (v) a delay in availability or receipt of material necessary for the construction work on the Demised Premises; or by anything else beyond the reasonable control of Landlord, including delays caused directly or indirectly by an act or a failure to act by Tenant or Tenant's Visitors. For the avoidance of doubt, Excusable Delay shall not excuse the timely performance of any monetary obligations under this Lease, including, without limitation, the timely payment of Basic Rent and Additional Rent.

Exercise Notice: defined in Section 3.4(a).

Extra Work: defined in Paragraph 4(a) of Schedule D annexed hereto.

Extraordinary Mandatory Redemption: an Extraordinary Mandatory Redemption as described in Section \_\_\_\_\_ of the Bond Indenture.

Extraordinary Optional Redemption: an Extraordinary Optional Redemption as described in Section \_\_\_\_\_ of the Bond Indenture.

Fair Market Value: the amount a willing and independent buyer would pay for the Demised Premises to a willing and independent seller (neither party being forced to buy or sell) if the Demised Premises were being used for the purposes permitted by this Lease.

Final Plans: defined in Paragraph 2(a) of Schedule D annexed hereto.

Financial Agreement: defined in Section 5.1.

Finish Work: defined in Paragraph 2(b) of Schedule D annexed hereto.

Government Obligations: defined in the Bond Indenture.

HUB: defined in the Preliminary Statement.

HUB Bonds: defined in 28.18(a)(iii).

HUB Costs: defined in Section 3.5.

Improvements: the Building together with all necessary and appropriate site improvements and infrastructure improvements in accordance with the Approved Plans.

Industrial Establishment: defined under the Industrial Site Recovery Act, N.J.S.A. 13:IK-6 *et seq.* (“ISRA”), as a business that has a NAICS number listed in Appendix C of ISRA; a business that has operated in New Jersey on or after December 31, 1983; and a business with business operations involving the storage or handling of hazardous substances, as defined at N.J.A.C. 7:1E.

Insurance Requirements: all terms of any insurance policy maintained by Landlord with respect to the Demised Premises, all terms of any insurance policy maintained by the Owners Committee pursuant to the Declaration and all requirements of the National Board of Fire Underwriters (or any other body exercising similar function) applicable to or affecting all or any part of the Premises.

Interest Portion: the interest payable on the Bonds.

Interior Improvements: the part of the Building within an Estate designed and intended for independent use such as office space, retail space, research space, medical space, laboratory space, educational space, faculty space, library space, academic support space, vivarium space, studios, co-working areas, conference rooms, makers space and storage space, and shall consist of the interior walls and partitions, which are contained within an Estate and shall also consist of the inner decorated and/or finished surfaces of the perimeter walls, floors and ceilings including, dry wall, paint, fixtures, windows, floors, coverings, and so much of the common heating, plumbing and ventilating systems, electrical wiring and other equipment systems or machinery which extend from the interior surface of the walls, floors or ceilings into the Building or which serve an Estate exclusively and are contained in the Building, but shall not mean any of the Building Improvements.

Land: defined in the Preliminary Statement.

Landlord: defined in the Preamble.

Landlord’s Estimated Operating Expenses: defined in Section 6.2.

Landlord’s Expense Statement: defined in Section 6.2.

Landlord’s Operating Expenses: the sum of (i) those costs or expenses paid or incurred by Landlord including, pursuant to the Master Lease, in connection with the ownership, operation, management, maintenance and repair of the Building Office Space, including, but not limited to, the cost of sewer meter charges; water; window cleaning; exterminating; maintenance, repair and replacement of utility systems; maintenance and repairs of any kind for which Landlord is not reimbursed; painting and/or sealing of the exterior of the Building Office Space; management fees; maintenance and service agreements; security services and/or alarm and fire protection systems and equipment; janitorial services; elevator service (if provided); wages, salaries, fringe benefits and other labor costs of all persons engaged by Landlord for the operation, maintenance and repair of the Building Office Space; payroll taxes and workers' compensation for such persons; legal and accounting expenses (except legal expenses incurred in preparing leases or enforcing the terms of

leases); licenses, permits and other governmental charges; rentals of machinery and equipment used in the operation and maintenance of the Building Office Space; and any other expense or cost, which, in accordance with generally accepted accounting principles and the standard management practices for buildings comparable to the Building, would be considered as an expense of operating, managing, maintaining or repairing the Building Office Space, including, but not limited to, overhead; and (ii) all expenses assessed under the Declaration which are allocable to the Building Office Space. All accounting for Landlord's Operating Expenses shall be on the accrual basis. In the event that, at any time during the Term, the Building Office Space is not fully leased and occupied by tenants, Landlord's Operating Expenses shall be projected as if the Building were fully occupied at all times.

Landlord Parties: Landlord and its affiliates, and their respective members, managers, directors, officers, employees, and agents.

Landlord's Tax Statement: defined in Section 5.4(a).

Lease: defined in the Preamble.

Lease Year: the twelve (12) month period commencing on the Commencement Date and expiring on the day immediately preceding the first (1<sup>st</sup>) anniversary of the Commencement Date, inclusive, and each succeeding twelve (12) month period during the Term; provided, however, if the Commencement Date is a day other than the first (1<sup>st</sup>) day of a calendar month, then the last Lease Year shall include the period from the anniversary of the Commencement Date to and including the Termination Date

Legal Requirements: all statutes, codes, ordinances, regulations, rules, orders, directives and requirements of any governmental entity, authority, agency and/or department, which now or at any time hereafter may be applicable to the Premises or any part thereof, including, but not limited to, all Environmental Laws.

Lien: any mortgage, pledge, lien, charge, encumbrance or security interest of any kind, including any inchoate mechanic's or materialmen's lien.

Loan Agreement: the Loan Agreement, dated as of \_\_\_\_\_, by and between the Developer and the Authority pursuant to which the Authority has loaned the proceeds of the Bonds to the Developer.

Major Work: defined in Section 7.4(b).

Master Lease: defined in the Preliminary Statement.

Monthly Expense Payment: defined in Section 6.3.

Monthly Revenues: defined in 28.18(a)(iv).

Net Award: any insurance proceeds or condemnation award payable in connection with any damage, destruction or Taking, less any expenses incurred by Landlord in recovering such amount.

NJEDA or Tenant: defined in the Preamble.

NJEDA Funding: defined in Section 28.18(a)(i).

NJEDA Reimbursement Fund: defined in Section 28.18(a)(ii).

Operating Committee: defined in Section 28.8.

Operating Committee Party: defined in Section 28.8.

Outstanding: defined in the Bond Indenture.

Owners Committee: defined in the Declaration.

Permitted Encumbrances: defined in Section 3.4(d)(iv).

Permitted Uses: defined in Section 8.1.

Preliminary Drawings: defined in Paragraph 1 of Schedule D annexed hereto.

Premises: the Land, the Building, all other improvements on the Land and all fixtures and appurtenances to the Land and the Building.

Prime Rate: a rate per annum equal to the Prime Rate (as such rate may vary from time to time) as reported in The Wall Street Journal.

Principal Portion: the principal payable on the Bonds.

Projected Taxes: defined in Section 5.4(a).

Proportional Declaration Areas Space: defined in the Preliminary Statement.

Purchase Option: defined in Section 3.4(a).

PSGA: defined in Section 28.18(a)(ii).

PWCRA: defined in Section 28.16.

Redemption Price: the Redemption Price as described in Section \_\_\_\_ of the Bond Indenture.

Rent: collectively, Basic Rent and Additional Rent.

Rent Commencement Date: **[TO BE DEFINED IN CONNECTION WITH DEBT SERVICE REQUIREMENTS ON THE BONDS]**

Restoration: the restoration, replacement or rebuilding of the Building or any portion thereof as nearly as practicable to its value, condition and character immediately prior to any damage, destruction or Taking.

Rutgers: defined in the Preliminary Statement.

Rutgers Master Lease: the Master Lease Agreement between Developer and Rutgers pursuant to which Developer leases to Rutgers approximately seventy-seven percent (77%) of the Building for a 30-year term.

State: the State of New Jersey.

Substantial Completion: defined in Section 3.2(c).

Support Agreement: defined in Section 3.4(f).

Taking: a taking of all or any part of the Premises to the extent it impacts the Demised Premises, or any interest therein or right accruing thereto, as the result of, or in lieu of, or in anticipation of, the exercise of the right of condemnation or eminent domain pursuant to any law, general or special, or by reason of the temporary requisition of the use or occupancy of the Premises to the extent it impacts the Demised Premises, by any governmental authority, civil or military.

Taxes: the sum of (i) all real estate taxes and assessments or payments in lieu thereof or supplements thereto, upon, applicable, attributable or assessed against the Demised Premises or any part thereof, or any improvement thereon and used in connection with the operation of the Demised Premises; and (ii) all real estate taxes and assessments or payments in lieu thereof or supplements thereto, upon, applicable, attributable or assessed against the Land or any part thereof, or any improvement thereon used in connection with the operation of the Land, which are assessed under the Declaration and allocable to the Demised Premises. In the event the Building Office Space is not fully leased and occupied by tenants, the Taxes shall be projected as if the Building Office Space was fully occupied at all times.

Tenant: defined in the Preamble.

Tenant Delay: a delay in Landlord's ability, when required to do so, to obtain a building permit or temporary or final certificate of occupancy or to achieve Substantial Completion, or deliver possession of all or part of the Demised Premises primarily because of any act or omission of Tenant or its agents, employees, contractors or subcontractors, which act or omission is not cured within ten (10) days of Tenant's receipt of notice thereof.

Tenant's HUB Share: defined in Section 3.5.

Tenant's Proportionate Share: for all purposes of this Lease, it is agreed to be 10.6%.

Tenant's Visitors: Tenant's agents, servants, employees, subtenants, contractors, invitees, licensees and all other persons invited by Tenant into the Demised Premises as guests or doing lawful business with Tenant.

Term: defined in Section 3.2(a).

Termination Date: the later of (a) the thirtieth (30th) anniversary of the Commencement Date, (b) the expiration of the Financial Agreement and (c) the Bonds no being longer Outstanding, as defined in the Bond Indenture, or such earlier date upon which the Term may expire or be terminated pursuant to any of the conditions of this Lease or pursuant to law.

Total Rental Space: defined in the Preliminary Statement.

Transfer Documents: defined in Section 3.4(d)(v).

Trustee: \_\_\_\_\_, the trustee for the Bonds.

Unavoidable Delays: A delay (whether affecting Developer, Landlord, Tenant, or their respective contractors or subcontractors) arising from or as a result of an explosion, sabotage, pandemic, accident, riot or civil commotion, acts of God, act of war, fire or other catastrophe, acts of any governmental body or agency (other than Tenant) (including delay in acting with respect to any application for any necessary permits or approvals), concealed conditions, Legal Requirements, administrative proceeding or litigation, which results in delay in commencing or completing construction, delay in receipt of ordered equipment, acts beyond a party's control and without its fault or negligence, or an act of the other party and any cause beyond the reasonable control of that party, provided, in all instances, that (a) the party asserting any Unavoidable Delay must have exercised its best efforts to minimize such delay and (b) no party may assert an Unavoidable Delay to the extent that its acts or omissions caused such delay. Notwithstanding anything contained in this Lease to the contrary, Unavoidable Delays shall not excuse or delay Tenant's obligation to pay Fixed Rent hereunder.

Underlying Encumbrance: defined in Section 23.1.

## **ARTICLE II**

### **REPRESENTATIONS, COVENANTS AND WARRANTIES**

Section 2.1 Tenant represents, covenants and warrants as follows:

(a) Tenant is a body corporate and politic organized and existing under the laws of the State of New Jersey; has full and complete power to enter into this Lease and the transactions contemplated hereby; and to carry out its obligations under this Lease.

(b) The authorized representative of Tenant executing this Lease has been duly authorized to execute and deliver this Lease by valid formal action of Tenant.

(c) There are no lawsuits or administrative or other proceedings pending or, to Tenant's actual knowledge, threatened, which contest Tenant's authority for, authorization or performance of, or expenditure of funds as contemplated by this Lease.

(d) Any information supplied and statements made by Tenant in any financial statement or current budget for this Lease delivered to Landlord prior to or contemporaneously with this Lease present such information fairly and accurately, in all material respects, in accordance with generally accepted accounting principles, as applicable to Tenant (as the same may be modified by applicable State law or regulations, policies or guidelines), applied

consistently with prior periods, and any current budget materials for this Lease so delivered, are true and accurate in all material respects.

(e) Except as may be permitted hereunder, Tenant shall not authorize any actions or act in a way that would cause any lien, charge or claim to exist on the Demised Premises, other than the Permitted Encumbrances.

(f) The execution and the delivery by Tenant of this Lease are in compliance with all laws and all enactments and regulations of any governmental authority relating or applicable to Tenant's occupancy and use of the Demised Premises.

(g) The obligation of Tenant to pay Rent hereunder is a direct and general obligation of the Tenant, not subject to set-off of any form, and the full faith and credit of the Tenant are irrevocably and unconditionally pledged for the payment thereof.

(h) To the extent any of the Bonds are issued as tax-exempt bonds, Tenant shall take no action that may impact the tax-exempt status of such Bonds.

Section 2.2 Landlord represents, covenants and warrants as follows:

(a) Landlord is a limited liability company duly organized, existing and in good standing under the laws of the State of New Jersey; has full and complete power to enter into this Lease and the transactions contemplated hereby; and to carry out its obligations under this Lease.

(b) The authorized representative of Landlord executing this Lease has been duly authorized to execute and deliver this Lease by valid formal action of Landlord.

### **ARTICLE III**

#### **DEMISE; TERM; PURCHASE OPTION; DISTRIBUTIONS**

Section 3.1 (a) Landlord, for and in consideration of the covenants hereinafter contained and made on the part of the Tenant, does hereby demise and lease to Tenant, and Tenant does hereby hire from Landlord, the Demised Premises, together with the non-exclusive right to use other portions of the Premises intended for common use, subject, however, to the terms and conditions of this Lease.

(b) Notwithstanding anything to the contrary in this Lease, Tenant acknowledges that the rights it is hereby acquiring in and to the Demised Premises are derived from the Master Lease and that the rights, terms and conditions of this Agreement are in all respects subordinate and subject to the terms and conditions of the Master Lease. Tenant agrees to be bound by each term, condition and covenant of the Master Lease that governs the use of the Demised Premises as if each such term, condition, covenant and obligation were set forth in full in this Agreement. Notwithstanding anything to the contrary herein, it is further agreed that, in the event that Developer terminates the Master Lease as a result of a default by Landlord thereunder, the Master Lease requires Developer to recognize Tenant as a direct tenant of Developer and to perform all of Landlord's obligations as landlord under this Lease and so long as Tenant is not in default under this Lease, Developer will not disturb Tenant's peace and quiet enjoyment of the Demised Premises. Tenant agrees, in such event, to attorn to Developer and to

recognize Developer as Landlord under this Lease. Such attornment shall be self-operative without the execution of any further instrument by Developer or Tenant.

(c) Landlord agrees not to voluntarily terminate the Master Lease with respect to the Demised Premises during the Initial Term hereof, unless satisfactory arrangements are made for Tenant to occupy the Demised Premises in accordance with this Agreement or on financial terms no less favorable to Tenant than this Agreement.

Section 3.2 (a) The term (the “Term”) of this Lease shall commence on the Commencement Date and shall end on the Termination Date.

(b) Landlord and Tenant each acknowledge and agree that Landlord will deliver possession of the Demised Premises when Substantial Completion has been achieved in accordance with Section 3.2(c) and Schedule D.

(c) As used herein, the phrase “Substantial Completion” shall mean that (i) the Finish Work has been completed in accordance with the Final Plans, other than (x) details of construction, decoration and mechanical adjustments which are minor in character and the non-completion of which will not unreasonably interfere with Tenant’s use of the Demised Premises, and (y) any part of the Finish Work which is not completed due solely to any act or omission of Tenant or Tenant’s Visitors; and (ii) Landlord has obtained a valid temporary certificate of occupancy for the Demised Premises or, alternatively, Landlord has completed all Finish Work necessary to entitle Landlord to the issuance of a temporary certificate of occupancy other than any Finish Work which is not completed due solely to any act or omission of Tenant or Tenant’s Visitors. If the occurrence of any condition listed in the immediately preceding sentence shall be delayed due to any act or omission of any nature by Tenant or Tenant’s Visitors, including, but not limited to, delays due to changes in or additions to the Finish Work requested by Tenant, delays in submission of information or estimates, delays in giving authorizations or approvals, or delays due to the postponement of any work at the request of Tenant, then nothing herein shall require Landlord to incur overtime charges or premium pay in order to complete any of its work if there has been delays so caused by Tenant or Tenant’s Visitors, and it shall not be deemed an element of due diligence that Landlord incur such overtime charges or premium pay except at the written direction and cost of Tenant.

(d) Landlord’s failure to complete the Finish Work or deliver possession of the completed Demised Premises to Tenant, shall not abate or otherwise relieve Tenant from its irrevocable and unconditional, direct and general obligation to pay Basic Rent or comply with any of its other obligations hereunder.

(e) Tenant acknowledges and agrees that neither Landlord nor any employee, agent or representative of Landlord has made any express or implied representations or warranties with respect to the physical condition of the Demised Premises, the fitness or quality thereof or any other matter or thing whatsoever with respect to the Demised Premises or any portion thereof, and that Tenant is not relying upon any such representation or warranty in entering into this Lease. Supplementing the foregoing, Tenant agrees further to accept possession of the Demised Premises in its “AS IS” condition as of the date of this Lease, except for the Finish Work which Landlord has agreed to complete.

Section 3.3 Tenant, by entering into occupancy of any part of the Demised Premises, shall be conclusively deemed to have agreed that Landlord up to the time of such occupancy had performed all of its obligations hereunder with respect to such part and that such part, except for (a) latent defects, and (b) minor details of construction, decoration and mechanical adjustment referred to above, was in satisfactory condition as of the date of such occupancy, unless within fifteen (15) days after such date Tenant shall give notice to Landlord specifying the respects in which the same was not in such condition.

Section 3.4 (a) Subject to the provisions of this Section 3.4, Landlord hereby grants to Tenant the option to purchase the Demised Premises from Landlord for \$1.00 at the end of the Term (the "Purchase Option"), exercisable on a one-time only basis by providing prior written notice to Landlord of its election to exercise the Purchase Option (the "Exercise Notice") no earlier than one year prior to the Termination Date, but at least one hundred twenty days (120) days prior to the Termination Date.

(b) Tenant's right to exercise the Purchase Option is subject to Tenant not being in default under this Lease beyond any applicable notice and grace periods.

(c) Promptly following Landlord's receipt of the Exercise Notice, Landlord shall notify Developer that Tenant has elected to exercise the Purchase Option and that Landlord is exercising its option to acquire the Demised Premises from Developer as set forth in the Master Lease and that Landlord will assign its right to acquire the Demised Premises to Tenant pursuant to the terms of the Master Lease, so that at the closing of title, Developer will transfer title to the Demised Premises directly to Tenant.

(d) The Purchase Option granted Tenant herein shall be subject to the following conditions:

(i) The Purchase Option, if not exercised in accordance with Section 3.4(a), shall expire and become null and void at 5:00 PM ET on the one hundred twentieth (120th) day prior to the Termination Date;

(ii) The Purchase Option shall not merge with Tenant's right and obligations under this Lease unless and until title closes and a deed is delivered;

(iii) The closing of title to the Demised Premises (the "Closing") shall be held on or about the Termination Date, or, alternatively, on such date and at such time and place as Landlord and Tenant shall have agreed upon.

(iv) At the Closing, Landlord shall convey good and marketable title to the Demised Premises, insurable by any reputable title insurance company at regular rates (but not by affirmative title insurance coverage) and the Demised Premises shall be free and clear of all liens and shall be subject only to those encumbrances set forth on Schedule F attached hereto (collectively, the "Permitted Encumbrances").

(v) At the Closing, Landlord shall deliver to Tenant or Tenant's title insurer, as applicable, a bargain and sale deed with covenants against grantor's acts

and other documents that are required to record said deed or insure title to the Demised Premises and as are customary for transfers of real estate in New Brunswick, New Jersey, all duly executed by Developer (collectively, the “Transfer Documents”).

(vi) The Closing shall not occur unless 100% of the Outstanding amounts due under the Bonds have been indefeasibly paid in full.

(vii) All customary apportionments and adjustments for Taxes, water, sewer and utility charges shall be made as of 11:59 PM on the day immediately preceding the date of Closing and documented on a settlement statement.

(viii) Tenant shall pay all recording fees, all transfer taxes in connection with the sale of the Demised Premises and all recording fees in connection with recording of the deed. Upon the Closing, this Lease shall be of no further force, effect or application, except solely and except for any of the other terms, provisions and conditions of this Lease that are expressly provided as otherwise surviving the expiration or sooner termination of this Lease.

(ix) Landlord shall pay its own legal costs. Tenant shall pay for its title report, survey, recording fees customary for a purchaser, the title policy when issued, its own legal costs, the fees and charges of Tenant’s title insurer customary for a purchaser.

(e) The rights granted to Tenant under this Section 3.4 are personal to Tenant, and they cannot be assigned separately from this Lease or in connection with an assignment of this Lease.

(f) If the Purchase Option expires pursuant to Section 3.4(d)(i) above, Rutgers will have the right, commencing on the one hundred twenty first (121st) day prior to the Termination Date and expiring at 5:00 PM ET on the ninetieth (90th) day prior to the Termination Date, to exercise its option to acquire title to the Demised Premises pursuant to the terms of that certain Master Lease Agreement between Developer and Rutgers concerning certain space in the Building, which Master Lease Agreement requires, among other things, as a condition to transferring title to the Demised Premises to Rutgers, that Rutgers pay to Tenant all moneys paid by Tenant, if any, pursuant to Tenant’s obligations under that certain Project Support and Guaranty Agreement dated on or about the date hereof by Tenant in favor of Landlord and the Authority (the “Support Agreement”) which guaranties the payment of a certain percentage of any deficiencies in debt service and programming and operating expenses for the HUB.

**Section 3.5 Operational Cash Distributions.** During the Term, in consideration of Tenant entering into the Support Agreement, Landlord agrees to make a distribution to Tenant on an annual basis, the date of which to be determined by Landlord in its sole discretion, in an amount equal to sixteen and one-half percent (16.5%) (“Tenant’s HUB Share”) of the Available Cash from Operations. As used in this Section 3.5, the following terms shall have the following meanings assigned to such terms:

“Available Cash from Operations” means all revenue actually received by Landlord from the operation and programming of the HUB and available for distribution from time to time after: (i) payment of all debt service allocable to the HUB that are due and payable as of such date, (ii) payment of all HUB Costs that are due and payable as of such date and (iii) at the sole and absolute discretion of Landlord, any reserves that Landlord believes is advisable for the operation, programming and maintenance of the HUB.

“HUB Costs” means all of the costs and expenditures of any kind and payments thereof made or to be made by or on behalf of Landlord for the ownership, operation, programming and maintenance of the HUB including, (i) debt service owed by Landlord with respect to the HUB, (ii) Landlord Operating Expenses as defined in this Lease that are allocable to the HUB, (ii) fees and expenses of any manager engaged by Landlord to operate, program and/or maintain the HUB, and (iii) reimbursements to other parties for costs and expenses incurred on behalf, or for the benefit, of Landlord with respect to the operation, programming and maintenance of the HUB.

#### **ARTICLE IV**

#### **BASIC RENT; ADDITIONAL RENT**

Section 4.1 Commencing on the Rent Commencement Date, Tenant shall pay Basic Rent in accordance with Schedule B. The obligation of Tenant to pay Basic Rent when due without notice or demand therefore is a direct and general obligation of the Tenant and shall be absolute and unconditional in all events, including, without limitation, any payment required to be made pursuant to Section \_\_\_\_ of the Bond Indenture, whether or not the Demised Premises is completed, used or the Demised Premises is occupied by the Tenant or available for use or occupancy by the Tenant. Notwithstanding any dispute between Tenant and Landlord, or any other Person, Tenant shall make all Basic Rent payments required hereunder when due directly to Trustee, as assignee of Landlord, and shall not withhold any Basic Rent payment pending final resolution of such dispute, nor shall Tenant assert any right of set-off, credit, deduction or counterclaim against its irrevocable and unconditional, direct and general obligation to make such Basic Rent payments when due required under this Agreement. Tenant's irrevocable and unconditional, direct and general obligation to make Basic Rent payments when due during the Term shall not be abated through accident or unforeseen circumstances, including, without limitation, frustration of purpose. Tenant's irrevocable and unconditional, direct and general obligation to make Basic Rent payments when due shall survive the termination hereof for as long as the Bonds remain Outstanding. Landlord and Tenant agree that Developer shall be a third-party beneficiary of Tenant's obligation to pay Basic Rent in accordance with this Section 4.1.

Section 4.2 In addition to the Basic Rent, Tenant will pay and discharge when due, as additional rent (“Additional Rent”), all other amounts, liabilities and obligations which Tenant herein agrees to pay to Landlord, together with all interest, penalties and costs which may be added thereto pursuant to the terms of this Lease; each such amount, liability and obligation, together with any interest, penalty and/or cost thereon, shall be deemed Additional Rent regardless of whether it is specifically referred to as Additional Rent in this Lease. Landlord shall have all the rights, powers and remedies provided for in this Lease or at law or in equity or otherwise for failure to pay Additional Rent as are available for nonpayment of Basic Rent.

Section 4.3 If any installment of Basic Rent or Additional Rent is not paid when due, Tenant shall pay to Landlord on demand, as Additional Rent, a late charge equal to five percent (5%) of the amount unpaid. In addition, any installment or installments of Basic Rent or Additional Rent accruing hereunder which are not paid within ten (10) days after the date when due, shall bear interest at the Prime Rate from the due date thereof until the date of payment, which interest shall be deemed Additional Rent hereunder and shall be payable upon demand by Landlord.

Section 4.4 Tenant acknowledges that Landlord is irrevocably and unconditionally assigning its rights to receive Basic Rent hereunder to the Authority in connection with its payment obligations under the Loan Agreement, pursuant to the Bond Indenture and the Assignment Agreement. Tenant's obligations to pay Basic Rent when due is irrevocable and unconditional, and not subject to set-off of any form, and for so long as any Bonds remain Outstanding, the Authority may exercise Landlord's rights and remedies with respect to the Basic Rent hereunder as Landlord's assignee.

Section 4.5 In the event the Bonds are subject to Extraordinary Optional Redemption or Extraordinary Mandatory Redemption pursuant to Section \_\_\_\_ of the Bond Indenture, Tenant shall pay or cause to be paid Tenant's Proportionate Share of the required Redemption Price to the Trustee in the amount and in the manner prescribed by the Bond Indenture for such redemption and shall deposit with Trustee on a date fixed for such redemption, (i) with respect to a redemption of all of the then Outstanding Bonds, an amount equal to all Rent and any other amounts then due or past due which, together with any available moneys permitted to be applied to the purpose, that shall equal the Redemption Price, together with all other sums at the time due or to become due hereunder by the date of exercise of the option, or (ii) with respect to a redemption of less than all of the then Outstanding Bonds, such portion of the Redemption Price as shall be stated in the notice from the Borrower or the Trustee, as applicable. The date of any payment by Tenant of the Redemption Price shall be on a date which is not less than thirty (30) days prior to the date fixed for the redemption of the Bonds.

Section 4.6 Notwithstanding any payments by Tenant in connection with a partial redemption of the Bonds, all of Tenant's covenants, obligations and agreements hereunder shall remain in full force and effect and shall not be modified, altered or otherwise changed, including its obligation to pay Rent and for the Redemption Price thereafter, which shall continue.

Section 4.7 Tenant's obligation to pay the Redemption Price will be deemed to be satisfied upon the deposit by Tenant with Trustee of (a) moneys sufficient to pay the Redemption Price, and/or (b) Government Obligations, the principal of and the interest on, which when due, shall be sufficient to pay the Redemption Price, subject to and in accordance with Article \_\_\_\_ and Article \_\_\_\_ of the Bond Indenture.

Section 4.8 Landlord will contract for and pay all charges for all electric, gas and other utility services provided to the Building Office Space to be used on or about the Demised Premises and all such utility charges shall be included in Landlord's Operating Expenses. Landlord shall not be obligated to pay for any utility charges until it has received payment therefor from Tenant. Tenant will contract for and pay all charges for all communication services (telephone, cable and internet) at any time rendered or used on or about the Demised Premises to the company providing the same before any interest or penalty may be added thereto. In no event shall Landlord be

responsible or liable for any general, special or consequential damages on account of the failure to supply Tenant, or for the failure of Tenant to receive, any or sufficient utility service, nor shall such failure be deemed a constructive eviction or constitute a breach of any implied warranty. In addition, Tenant shall not be entitled to any cessation, abatement, reduction or other offset of Rent hereunder in the event of any failure to receive any or sufficient utility service.

Section 4.9 Except as otherwise expressly provided herein, (a) this Lease shall be deemed and construed to be an absolutely net lease; (b) Tenant shall pay all costs and expenses connected with the occupancy and operation of the Demised Premises as specifically set forth herein, including, without limitation, Article 7 hereof, it being intended that the Basic Rent, Additional Rent and all other sums due to Landlord from Tenant herein shall be an absolutely net return to Landlord throughout the Term, free of any expense, charge or other deduction whatsoever with respect to the occupancy and operation of the Demised Premises; (c) Tenant shall pay Basic Rent on an absolutely net basis throughout the Term; (d) Tenant shall pay Additional Rent throughout the Term and all other costs connected with Tenant's occupancy and operation of the Demised Premises including, but not limited to, Taxes, without setoff or deductions except as otherwise expressly permitted herein; and (e) Landlord shall not be expected or required to make any payment of any kind whatsoever or be under any obligation or liability hereunder for any such payments for such occupancy and operations, other than those which have been funded or will be reimbursed by Tenant pursuant to this Agreement, except as otherwise provided in this Agreement. Notwithstanding the foregoing, Tenant's payment of any Basic Rent and Additional Rent shall not prejudice Tenant's ability to file a claim or counterclaim against Landlord or any other Person with respect to any dispute between Tenant and Landlord.

## **ARTICLE V**

### **REAL ESTATE TAXES**

Section 5.1 Landlord has entered into a financial agreement with the City for the Building, dated \_\_\_\_\_, 2023, pursuant to the Long-Term Tax Exemption Law ("Financial Agreement") providing for the payment of annual service charges in lieu of ad valorem property taxes. Such annual service charges and any other amounts due under the Financial Agreement shall be deemed to be Taxes.

Section 5.2 Commencing on the date that Substantial Completion is achieved and continuing on the first day of the month thereafter through the end of the Term, Tenant shall pay to Landlord, as Additional Rent, a sum equal to one-twelfth (1/12) of the Taxes due for the Total Rental Space calculated as follows:

(a) For the first five (5) years of the Term, \$4.00 per square foot multiplied by the Total Rental Space, such amount being \$\_\_\_\_\_ per year.

(b) For years 6 through 10 of the Term, \$4.40 per square foot multiplied by the Total Rental Space, such amount being \$\_\_\_\_\_ per year.

(c) For years 11 through 15 of the Term, \$4.84 per square foot multiplied by the Total Rental Space, such amount being \$\_\_\_\_\_ per year.

(d) For years 16 through 20 of the Term, \$5.32 per square foot multiplied by the Total Rental Space, such amount being \$\_\_\_\_\_ per year.

(e) For years 21 through 25 of the Term, \$5.86 per square foot multiplied by the Total Rental Space, such amount being \$\_\_\_\_\_ per year.

(f) For years 26 through 30 of the Term, \$6.44 per square foot multiplied by the Total Rental Space, such amount being \$\_\_\_\_\_ per year.

Taxes for less than a calendar year shall be prorated and apportioned.

Section 5.3 The Taxes payable by Tenant under this Article 5 shall be included in Landlord's Expense Statement delivered to Tenant by Landlord pursuant to Article 6.

Section 5.4 In the event that the Financial Agreement is terminated prior to the expiration of its term, the following provisions shall apply:

(a) Landlord shall determine or estimate the amount of the Taxes assessed against the Demised Premises for the calendar year in question (the "Projected Taxes") and shall submit such information to Tenant in a written statement ("Landlord's Tax Statement") and adjust the Landlord's Expense Statement to include the new Taxes payable by Tenant under this Article 5. Taxes for less than a calendar year shall be prorated and apportioned. Thereafter, within ninety (90) days following the first day of each succeeding calendar year within the Term, Landlord shall provide Tenant with the Projected Taxes and include such amount in Landlord's Expense Statement pursuant to Article 6. The provisions of Article 6 regarding reconciliation of actuals versus estimated Operating Expenses and audit rights shall also apply to Tenant with respect to the Taxes in the event that the Financial Agreement is terminated as aforesaid.

(b) Notwithstanding anything to the contrary contained in this Lease, Tenant shall not have the right to contest or appeal the validity of any Taxes or the amount of the assessed valuation of the Demised Premises.

(c) While proceedings for the reduction in assessed valuation for any year are pending, the computation and Tenant's payment of Taxes shall be based upon the original assessments for such year.

Section 5.5 In no event shall any adjustment in Tenant's obligation to pay Additional Rent under this Article 5 result in a decrease in the Basic Rent payable hereunder. Tenant's obligation to pay Additional Rent, and Landlord's obligation to credit and/or refund to Tenant any amount, pursuant to the provisions of this Article 5, shall survive the Termination Date.

Section 5.6 The provisions of Section 28.3 shall apply to Landlord's Tax Statement.

## **ARTICLE VI**

### **OPERATING EXPENSES; RESERVES**

Section 6.1 Tenant shall pay to Landlord, as Additional Rent, Tenant's Proportionate Share of the Landlord's Operating Expenses. Tenant's Proportionate Share of Landlord's Operating Expenses for less than a calendar year shall be prorated and apportioned.

Section 6.2 On or after the Commencement Date, and thereafter within ninety (90) days following the first day of each succeeding calendar year within the Term, Landlord shall determine or estimate the amount of Landlord's Operating Expenses for the calendar year in question ("Landlord's Estimated Operating Expenses") and shall submit such information to Tenant in a written statement ("Landlord's Expense Statement").

Section 6.3 Commencing on the first day of the month following the submission of any Landlord's Expense Statement and continuing thereafter on a monthly basis until Landlord renders the next Landlord's Expense Statement, Tenant shall pay to Landlord on account of its obligation under Section 6.1 of this Lease, a sum (the "Monthly Expense Payment") equal to one-twelfth (1/12) of Tenant's Proportionate Share of Landlord's Estimated Operating Expenses for such calendar year. Tenant's first Monthly Expense Payment after receipt of Landlord's Expense Statement shall be accompanied by the payment of an amount equal to the product of the number of full months, if any, within the calendar year which shall have elapsed prior to such first Monthly Expense Payment, times the Monthly Expense Payment; minus any Additional Rent already paid by Tenant on account of its obligation under Section 6.1 of this Lease for such calendar year.

Section 6.4 Each Landlord's Expense Statement shall reconcile the payments made by Tenant pursuant to the preceding Landlord's Expense Statement with Tenant's Proportionate Share of Landlord's Operating Expenses for the period covered thereby. Any balance due to Landlord shall be paid by Tenant within thirty (30) days after Tenant's receipt of Landlord's Expense Statement as Additional Rent; any surplus due to Tenant shall be applied by Landlord against the next accruing monthly installment(s) of Additional Rent due under this Article. If the Term has expired or has been terminated, Tenant shall pay the balance due to Landlord or, alternatively, Landlord shall refund the surplus to Tenant, whichever the case may be, within thirty (30) days after Tenant's receipt of Landlord's Expense Statement; provided, however, if the Term shall have been terminated as a result of a default by Tenant, then Landlord shall have the right to retain such surplus to the extent Tenant owes Landlord any Basic Rent or Additional Rent.

Section 6.5 Tenant or its representative shall have the right to examine Landlord's books and records with respect to the reconciliation of Landlord's Operating Expenses for the prior calendar year set forth in Landlord's Expense Statement during normal business hours at any time within thirty (30) days following the delivery by Landlord to Tenant of such Landlord's Expense Statement. Unless Tenant shall give Landlord a notice objecting to said reconciliation and specifying the respects in which said reconciliation is claimed to be incorrect within thirty (30) days after its examination of Landlord's books and records, said reconciliation shall be considered as final and accepted by Tenant. Notwithstanding anything to the contrary contained in this Article, Tenant shall not be permitted to examine Landlord's books and records or to dispute said reconciliation unless Tenant has paid to Landlord the amount due as shown on Landlord's Expense Statement; said payment is a condition precedent to said examination and/or dispute.

Section 6.6 In no event shall any adjustment in Tenant's obligation to pay Additional Rent under this Article 6 result in a decrease in the Basic Rent payable hereunder. Tenant's obligation to pay Additional Rent, and Landlord's obligation to credit and/or refund to Tenant any amount, pursuant to the provisions of this Article 6, shall survive the Termination Date.

Section 6.7 Tenant shall also pay to Landlord, as Additional Rent, upon demand, one hundred percent (100%) of the amount of any increase in Landlord's Operating Expenses which is attributable to Tenant's use or manner of use of the Demised Premises, to activities conducted on or about the Demised Premises by Tenant or on behalf of Tenant or to any additions, improvements or alterations to the Demised Premises made by or on behalf of Tenant.

Section 6.8 Commencing on the date that Substantial Completion is achieved and continuing on the first day of the month thereafter through the end of the Term, Tenant shall pay to Landlord, as Additional Rent, a sum equal to one-twelfth (1/12) of an amount equal to \$0.40/sf of the Total Rental Space (the "Capital Reserve Amount"), which Landlord shall pay over to Developer to deposit into the Capital Reserve Account or Landlord may make such deposits on behalf of Developer. Capital Reserve Amounts for less than a calendar year shall be prorated and apportioned.

Section 6.9 The Capital Reserve Amounts payable by Tenant under this Article 6 shall be included in Landlord's Expense Statement delivered to Tenant by Landlord pursuant to this Article 6.

Section 6.10 The provisions of Section 28.3 shall apply to Landlord's Expense Statement.

## **ARTICLE VII**

### **MAINTENANCE, ALTERATIONS AND ADDITIONS; REMOVAL OF TRADE FIXTURES**

Section 7.1 Tenant agrees to keep the Demised Premises in good order and condition (except for ordinary wear and tear) and, except as provided in Section 7.2, will make all non-structural repairs, alterations, renewals and replacements, ordinary and extraordinary, foreseen or unforeseen, and shall take such other action as may be necessary or appropriate to keep and maintain the Demised Premises in good order and condition. Except as expressly provided in this Lease, Landlord shall not be obligated in any way to maintain, alter or repair the Demised Premises. Notice is hereby given that, except with respect to repairs or restoration undertaken by Landlord, Landlord will not be liable for any labor, services or materials furnished or to be furnished to Tenant, or to anyone holding the Demised Premises or any part thereof through or under Tenant, and that no mechanics' or other liens for any such labor or materials shall attach to or affect the interest of Landlord in and to the Demised Premises.

Section 7.2 Subject to the terms of the Declaration, Developer is required under the Master Lease to make all repairs and replacements to the structural columns and beams, the exterior walls and the exterior windows of the Building; provided, however, if such repairs and replacements are necessitated by the intentional acts or negligence of Tenant or Tenant's Visitors, then Tenant shall reimburse Landlord, upon demand, for the reasonable cost thereof, and Landlord

will then reimburse Developer for such cost. Landlord agrees to enforce the terms of the Master Lease to cause Developer to make any such repairs or replacements. Pursuant to the Master Lease, the costs and expenses incurred by Developer in connection with such repairs and replacements shall be charged to Landlord under the Master Lease to the extent permitted thereby, which Landlord shall then charge to Tenant as Additional Rent.

Section 7.3 All maintenance and repair, and each addition, improvement or alteration, performed by, on behalf of or for the account of Tenant (a) must not, individually or in the aggregate, lessen the Fair Market Value of the Demised Premises or adversely affect the usefulness of the Building for use as an office building, (b) shall be completed expeditiously in a good and workmanlike manner, and in compliance with all applicable Legal and Insurance Requirements, (c) shall be completed free and clear of all Liens and (d) shall be performed by contractors approved by Landlord to the extent such work involves any work to any electrical, mechanical, plumbing or other system of the Demised Premises, any work to the outside of the Demised Premises, any work to the roof of the Building or any work to any structural element of the Demised Premises.

Section 7.4 (a) If there is no default by Tenant under this Lease, Tenant may, upon prior notice to Landlord and submission of plans and specifications, make interior, non-structural additions, improvements or alterations to the Demised Premises having an aggregate cost not to exceed \$150,000.00, so long as the same do not affect, alter, interfere with or disrupt any of the electrical, mechanical, plumbing or other system of the Building, do not affect the outside appearance of the Building, do not affect the roof of the Building, do not affect the ingress to or egress from the Demised Premises and do not affect any structural element of the Building.

(b) Tenant shall not make any addition, improvement or alteration of the Demised Premises having an aggregate cost in excess of \$150,000.00, or affecting, altering, interfering with or disrupting any electrical, mechanical, plumbing or other system of the Building, or affecting the outside appearance, the roof, the ingress to or the egress from the Demised Premises and/or any structural element of the Building (any such work being hereinafter referred to as "Major Work"), unless Tenant submits to Landlord detailed plans and specifications therefor and Landlord approves such plans and specifications in writing (which such approval shall be at Landlord's sole discretion). If Landlord approves such work, Landlord may, at any time within twenty (20) days after such approval, submit to Tenant a proposal to undertake such work at a specified fixed price. If the fixed price submitted by Landlord is equal to or less than other bids received by Tenant from independent contractors utilizing union labor (which contractors must be acceptable to Landlord), Tenant shall, at the request of Landlord, engage Landlord to undertake the Major Work in accordance with Landlord's proposal and the plans and specifications and at the price quoted by Landlord. If the fixed price submitted by Landlord is more than other responsible fixed price bids received by Tenant from said independent, licensed contractors for the work shown on the plans and specifications approved by Landlord, Tenant shall deliver to Landlord a copy of the lower bid which Tenant desires to accept, certified by Tenant to be a true and complete copy of the original bid. Within ten (10) days after the giving of such lower bid to Landlord, Landlord shall have the option to elect, by notice to Tenant within said ten (10) day period, to agree to perform the work contemplated by said plans and specifications for the fixed price set forth on said lower bid. In the event of such election by Landlord, Tenant shall engage

Landlord to undertake the Major Work in accordance with the plans and specifications and Landlord's proposal at the fixed price set forth on said lower bid.

Section 7.5 (a) All additions, improvements and alterations to the Demised Premises shall, upon installation, become the property of Landlord and shall be deemed part of, and shall be surrendered with, the Demised Premises, unless Landlord, by notice given to Tenant at least thirty (30) days prior to the Termination Date, elects to relinquish Landlord's right thereto. If Landlord elects to relinquish Landlord's right to any such addition, improvement or alteration, Tenant shall remove said addition, improvement or alteration, shall promptly repair any damage to the Demised Premises caused by said removal and shall restore the Demised Premises to the condition existing prior to the installation of said addition, improvement or alteration; all such work shall be done prior to the Termination Date.

(b) At any time during the Term, Tenant may install or place or reinstall or replace and remove from the Demised Premises any trade equipment, machinery and personal property belonging to Tenant, provided that (i) Tenant shall repair all damage caused by such removal and (ii) Tenant shall not install any equipment, machinery or other items upon the roof of the Building or make any openings on or about such roof. Such trade equipment, machinery and personal property shall not become the property of Landlord.

Section 7.6 Subject to Unavoidable Delays and Tenant Delays, in the event that the Substantial Completion of the Demised Premises has not occurred by \_\_\_\_\_, 2026 (the "Completion Date") and Rutgers has not exercised its step-in rights under the Rutgers Master Lease to complete the Improvements, then, Tenant, at its option, may give notice to Landlord thereof, following which Landlord shall have ninety (90) days to cause Developer to complete the Improvements, failing which Tenant, at its option, may (1) enter upon the Land to complete the Improvements in accordance with the Approved Plans, (2) assume any or all of the Construction Agreements and take over and use all or any part of the labor, materials, equipment, furniture, fixtures and articles of personal property contracted for by Landlord, whether or not previously incorporated into the Improvements, and (3) in connection with any construction of the Improvements undertaken by Tenant pursuant to the provisions of this Section 7.6, (a) engage builders, contractors, architects, engineers and others for the purpose of furnishing labor, materials, equipment, furniture, fixtures and articles of personal property in connection with the construction of the Improvements, and (b) pay, settle or compromise all bills or claims which may become liens against the Improvements, or any portion thereof, or which have been, or may be, incurred in any manner in connection with completing the construction of the Improvements or for the discharge of liens or encumbrances. Tenant shall be reimbursed for costs incurred by it pursuant to this Section 7.6 from funds available for the construction of the Improvements as if it were Developer in accordance with the draw procedures set forth in the Indenture and Landlord shall cause Developer to facilitate such draws on behalf of Tenant; provided nothing herein shall permit Tenant to abate or set-off against the Fixed Rent as and when due under this Lease.

Section 7.7 In the event that Tenant exercises its right to complete the Improvements under Section 7.6, Landlord hereby agrees to:

(a) cause Developer to assign to Tenant all of its right, title and interest with respect to the following: (i) any or all of the Construction Agreements that are necessary for Tenant

to complete the Improvements; (ii) the Approved Plans; and (iii) all permits, licenses, consents and approvals now or hereinafter issued by any governmental authority having jurisdiction over the Improvements; provided, however, that such assignments shall become effective only upon Tenant electing in writing to perform the construction of the Improvements and assuming such Construction Agreement(s), as provided in Section 7.6 hereof; and

(b) cause Developer to name Tenant as an obligee on any payment, performance or completion bond obtained by Developer or its construction manager for the Improvements.

## **ARTICLE VIII**

### **USE OF DEMISED PREMISES**

Section 8.1 Tenant shall not, except with the prior consent of Landlord, use or suffer or permit the use of the Demised Premises or any part thereof for any purposes other than for general administrative offices and other tenant related functions, and any other legally permitted use, provided such use does not adversely impact the exclusion from gross income of the interest payable on the Bonds for Federal income tax purposes (the “Permitted Uses”); provided, however, anything in this Lease to the contrary notwithstanding, that (a) the portions of the Demised Premises which are identified as utility areas shall be used by Tenant only for the purposes for which they are designed and (b) Tenant complies with the requirements of Section 8.2 hereof.

Section 8.2 Neither Tenant nor Landlord shall use the Demised Premises in such fashion as would adversely affect the exemption of the interest paid or payable on the Bonds from Federal income taxation pursuant to Section 103(a) of the Code, which would cause such interest to be treated as an item of tax preference pursuant to Section 57(a)(5) of the Code, or which would cause the Bonds to be deemed “private activity bonds” within the meaning of Section 141(a) of the Code.

Section 8.3 Tenant shall not use, or suffer or permit the use of, the Demised Premises or any part thereof in any manner or for any purpose or do, bring or keep anything, or suffer or permit anything to be done, brought or kept, therein (including, but not limited to, the installation or operation of any electrical, electronic or other equipment) (a) which would violate any covenant, agreement, term, provision or condition of this Lease or is unlawful or in contravention of the certificate of occupancy for the Demised Premises or the Building, or is in contravention of any Legal or Insurance Requirement to which the Demised Premises is subject, or (b) which would overload or could cause an overload of the electrical or mechanical systems of the Building or which would exceed the floor load per square foot which the floor was designed to carry and which is allowed by law, or (c) which in the reasonable judgment of the Landlord may in any way impair or interfere with the proper and economic heating, air conditioning of the Building or (d) suffer or permit the Building or any component thereof to be used in any manner or anything to be done therein or anything to be brought into or kept thereon which, in the reasonable judgment of Landlord, would in any way impair or tend to impair or exceed the design criteria, the structural integrity, character or appearance of the Building, or result in the use of the Building or any component thereof in a manner or for a purpose not intended; nor shall the Tenant use, or suffer or permit the use of, the Demised Premises or any part thereof in any manner, or do, or suffer or permit the doing of, anything therein or in connection with the Tenant’s business or advertising which, in the reasonable judgment of the Landlord, may be prejudicial to the business of Landlord.

Section 8.4 Tenant shall obtain, at its sole cost and expense, all permits, licenses or authorizations of any nature required in connection with the operation of Tenant's business at the Demised Premises.

## **ARTICLE IX**

### **LIABILITY OF TENANT**

Section 9.1 Subject to the terms and conditions of this Lease, Tenant agrees to reimburse Landlord Parties for any losses, claims, liabilities or expenses (including reasonable attorney's fees and expenses) proximately arising from (a) Tenant's Event of Default under the Lease or Declaration and/or (b)(i) Tenant's use and occupancy of the Demised Premises, (ii) any spill or discharge of a hazardous substance or hazardous waste by Tenant or Tenant's Visitors and/or (iii) Tenant's failure to comply with the provisions of Article 11. The obligations of Tenant under this Section 9.1 shall survive the expiration or earlier termination of this Lease provided, however, such obligation to reimburse shall at all times be subject to the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq.

## **ARTICLE X**

### **COMPLIANCE WITH REQUIREMENTS**

Section 10.1 Tenant will (i) comply with all Legal Requirements, Insurance Requirements and the terms, covenants and conditions of the Declaration applicable to the Demised Premises and the use thereof and (ii) maintain and comply with all permits, licenses and other authorizations required by any governmental authority for its use of the Demised Premises and for the proper operation, maintenance and repair of the Demised Premises or any part thereof. Landlord will join in the application (but at no cost to Landlord) for any permit or authorization with respect to Legal Requirements if such joinder is necessary.

Section 10.2 Tenant shall not do, or permit to be done, anything in or to the Demised Premises, or bring or keep anything therein which will, in any way, increase the cost of fire or commercial liability insurance on the Demised Premises, or invalidate or conflict with the fire insurance or public liability insurance policies covering the Demised Premises or any personal property kept therein by Landlord, or obstruct or interfere with the rights of Landlord or of other tenants, or in any other way injure Landlord or other tenants, or subject Landlord to any liability for injury to persons or damage to property, or interfere with good order of the Building, or conflict with the Legal Requirements. Any increase in fire insurance premiums on the Demised Premises or the contents within the Building, or any increase in the premiums of any other insurance carried by Landlord or the Owners Committee in connection with the Building or the Premises, caused by the use or occupancy of the Demised Premises by Tenant and any expense or cost incurred in consequence of the negligence, carelessness or willful action of Tenant, shall be Additional Rent and paid by Tenant to Landlord within ten (10) days of demand therefore made by Landlord to Tenant.

**ARTICLE XI**  
**COMPLIANCE WITH ENVIRONMENTAL LAWS**

Section 11.1 Supplementing the provisions of Article 10, Tenant shall comply, at its sole cost and expense, with all Environmental Laws in connection with its use and occupancy of the Demised Premises.

Section 11.2 Tenant shall deliver promptly to Landlord a true and complete photocopy of any correspondence, notice, report, sampling, test, finding, declaration, submission, order, complaint, citation or any other instrument, document, agreement and/or information submitted to, or received from, any governmental entity, department or agency in connection with any Environmental Law relating to or affecting Tenant, Tenant's employees, Tenant's use and occupancy of the Demised Premises.

Section 11.3 Tenant shall not cause or permit any "hazardous substance" or "hazardous waste" (as such terms are defined in ISRA) to be brought, kept or stored on or about the Demised Premises, and Tenant shall not engage in, or permit any other person or entity to engage in, any activity, operation or business on or about the Demised Premises which involves the generation, manufacture, refining, transportation, treatment, storage, handling or disposal of hazardous substances and/or hazardous wastes.

Section 11.4 (a) If a spill or discharge of a hazardous substance or a hazardous waste occurs on the Premises, and Tenant becomes aware of same, Tenant shall give Landlord immediate oral and written notice of such spill and/or discharge, setting forth in reasonable detail all relevant facts of which it has knowledge. Tenant shall not be liable for any costs and expenses related to a spill or discharge occurring outside of the Demised Premises unless resulting from the act or omission of Tenant.

(b) In the event that a spill or discharge arose out of or in connection with Tenant's use and occupancy of the Demised Premises, or in the event such spill or discharge was caused by the act, negligence or omission of Tenant or Tenant's Visitors, then Tenant shall pay all costs and expenses relating to compliance with the applicable Environmental Law (including, without limitation, the costs and expenses of the site investigations and of the removal and remediation of such hazardous substance or hazardous wastes).

(c) Without relieving Tenant of its obligations under this Lease and without waiving any default by Tenant under this Lease, Landlord shall have the right, but not the obligation, to take such action as Landlord deems necessary or advisable to cleanup, remove, resolve or minimize the impact of or otherwise deal with any spill or discharge of any hazardous substance or hazardous waste. In the event such spill or discharge arose out of or in connection with Tenant's use and occupancy of the Demised Premises, or in the event such spill or discharge was caused by the act, negligence or omission of Tenant or Tenant's Visitors, then Tenant shall pay to Landlord on demand, as Additional Rent, all reasonable costs and expenses incurred by Landlord in connection with any action taken by Landlord that is necessary to comply with applicable Environmental Law.

Section 11.5 Tenant acknowledges and agrees not to conduct any operations at the Demised Premises that could constitute an “Industrial Establishment” (as defined under ISRA) or subject the Demised Premises to the provisions of any other Environmental Law. In the event that Tenant conducts such operations in violation of this Section 11.5, then Tenant agrees, notwithstanding Landlord’s right to terminate this Lease, to comply, at its sole cost and expense, with all requirements of ISRA and any other applicable Environmental Law to the satisfaction of Landlord and the governmental entity, department or agency having jurisdiction over such matters (including, but not limited to, performing site investigations and performing any removal and remediation required in connection therewith), in connection with (i) the occurrence of the Termination Date, (ii) any termination of this Lease prior to the Termination Date, (iii) any closure, transfer or consolidation of Tenant’s operations at the Demised Premises, (iv) any change in the ownership or control of Tenant, (iv) any permitted assignment of this Lease or permitted sublease of all or part of the Demised Premises or (v) any other action by Tenant which triggers ISRA or any other Environmental Law. Landlord is not aware of any present condition on the Land that violates any Environmental Law and requires remediation.

Section 11.6 Tenant’s obligations under this Article 11 shall survive the expiration or earlier termination of this Lease.

## **ARTICLE XII**

### **DISCHARGE OF LIENS**

Section 12.1 Tenant will take steps to discharge within fifteen (15) days after receipt of notice thereof any Lien on the Premises, the Demised Premises or the Basic Rent, Additional Rent or any other sums payable under this Lease, caused by or arising out of Tenant’s acts or Tenant’s failure to perform any obligation hereunder.

## **ARTICLE XIII**

### **PERMITTED CONTESTS**

Section 13.1 Tenant may contest by appropriate proceedings, the amount, validity or application of any Legal Requirement which Tenant is obligated to comply with or any Lien which Tenant is obligated to discharge, provided that (a) such proceedings shall suspend the collection thereof, (b) no part of the Premises, the Demised Premises or of any Basic Rent or Additional Rent or other sum payable hereunder would be subject to loss, sale or forfeiture during such proceedings, (c) Landlord would not be subject to any civil or criminal liability for failure to pay or perform, as the case may be, (d) Tenant shall have furnished such security as may be required in the proceedings or reasonably requested by Landlord, (e) such proceedings shall not affect the payment of Basic Rent, Additional Rent or any other sum payable to Landlord hereunder or prevent Tenant from using the Demised Premises for its intended purposes, and (f) Tenant shall notify Landlord of any such proceedings not less than ten (10) days prior to the commencement thereof, and shall describe such proceedings in reasonable detail. Tenant will conduct all such contests in good faith and with due diligence and will, promptly after the determination of such contest, pay and discharge all amounts which shall be determined to be payable therein.

## **ARTICLE XIV**

### **INSURANCE**

Section 14.1 (a) Tenant shall obtain, and shall keep in full force and effect during the Term, the following insurance coverages, with insurers which are authorized to do business in the State of New Jersey and which are rated at least A- in Best's Key Rating Guide:

(i) commercial general liability insurance (including, during any period when Tenant is making alterations or improvements to the Demised Premises, coverage for any construction on or about the Demised Premises), against claims for bodily injury, personal injury, death or property damage occurring on, in or about the Demised Premises, or as a result of ownership of facilities located on the Demised Premises, in an amount per occurrence of not less than \$1,000,000.00 per occurrence, \$2,000,000 aggregate limit for any bodily injury, personal injury, death or property damage and shall provide for blanket contractual liability, broad form property damage, products/completed operations and personal injury coverage;

(ii) excess liability with a \$5,000,000 per occurrence and aggregate limit;

(iii) workers' compensation insurance coverage for the full statutory liability of Tenant;

(iv) after the substantial completion of construction of the Interior Improvements in the Demised Premises, property insurance on such Interior Improvements, with respect to risks from time to time included on a standard "Cause of Loss Special Form" policy, including, but not limited to, fire, vandalism, hurricane, flood, earthquake and malicious mischief, with an agreed amount endorsement in an amount not less than the full insurable value of such improvements, as determined from time to time (but not less often than once every year) by a method required by the insurer or insurers;

(v) during any period Tenant is making alterations or improvements to the Demised Premises, Tenant shall maintain the appropriate property insurance for the improvements; and

(vi) such other insurance with respect to the Demised Premises in such amounts and against such insurable exposures as may reasonably and customarily be required by any mortgagee holding a first lien upon the Demised Premises.

(b) The policies of insurance required to be maintained by Tenant pursuant to Section 14.1 (except 14.1(a)(iii), (iv), (v) and (vi)) shall include as additional insureds Landlord and any other party that Landlord may specify on a primary and non-contributory basis, and all of the policies required pursuant to Section 14.1 shall be reasonably satisfactory to Landlord. In addition, said policies of insurance shall (i) provide that thirty (30) days' prior written notice of suspension, cancellation, termination, non-renewal or lapse of coverage shall be given with the exception of (10) days' notice for non-payment of premium, and that such insurance shall not be invalidated by any act or neglect of Landlord or Tenant or any owner of the Estates, nor by any

change in the title or ownership of the Demised Premises, nor by occupation of the Demised Premises for purposes more hazardous than are permitted by such policy, and (ii) not contain a provision relieving the insurer thereunder of liability for any loss by reason of the existence of other policies of insurance covering the Demised Premises against the peril involved, whether collectible or not; and the policies of insurance required to be maintained by Tenant pursuant to subsection 14.1(a)(i) shall also include a contractual liability endorsement (equivalent to coverage afforded under ISO CGL Form CG 00 01).

(c) On the Commencement Date, Tenant shall deliver to Landlord original or duplicate policies or certificates of the insurers evidencing all the insurance which is required to be maintained hereunder by Tenant, and, within ten (10) days prior to the expiration of any such insurance, other original or duplicate policies or certificates evidencing the renewal of such insurance.

Section 14.2 Unless the Owners Committee obtains property and liability insurance coverage for the Building and the Premises the cost of which is allocated to the owners of the Estates pursuant to the Declaration, Landlord shall obtain, and keep in full force and effect during the Term, such policies of insurance as Landlord shall deem necessary or appropriate with respect to the Building Office Space, including, without limitation, property insurance on the Building Office Space with respect to risks from time to time included under a standard Causes of Loss-Special form policy, including, but not limited to, fire, vandalism, flood, earthquake, malicious mischief, loss of rental income endorsement (for a 12-month period), with an agreed endorsement in an amount equal to the full replacement cost of the Building Office Space (but in no event less than the amount required by any mortgagee of the Premises), as determined from time to time. The cost of said insurance shall be included in Landlord's Operating Expenses.

Section 14.3 (a) Landlord hereby waives and releases Tenant, and Tenant hereby waives and releases Landlord, from any and all liabilities, claims and losses for which the released party is or may be held liable to the extent of any property insurance proceeds received by said injured party.

(b) Each party hereto agrees to have included in each of its insurance policies (insuring the Building Improvements in the Building Office Space in the case of Landlord, and insuring the Interior Improvements and Tenant's personal property, trade fixtures, equipment and other improvements in the case of Tenant, against loss, damage or destruction by fire or other casualty) a waiver of the insurer's right of subrogation against the other party to this Lease. If there is any extra charge for such waiver, the party requesting the waiver shall pay the extra charge therefor. If such waiver is not enforceable or is unattainable, then such insurance policy shall contain either (i) an express agreement that such policy shall not be invalidated if Landlord or Tenant, whichever the case may be, waives the right of recovery against the other party to this Lease or (ii) any other form for the release of Landlord or Tenant, whichever the case may be. If such waiver, agreement or release shall not be, or shall cease to be, obtainable from Landlord's insurance company or from Tenant's insurance company, whichever the case may be, then Landlord or Tenant shall notify the other party of such fact and shall use its best efforts to obtain such waiver, agreement or release from another insurance company satisfying the requirements of this Lease.

## **ARTICLE XV**

### **ESTOPPEL CERTIFICATES**

Section 15.1 Tenant agrees that at any time and from time to time, within ten (10) days of the receipt of written request by Landlord, it will execute, acknowledge and deliver a statement in writing certifying (i) that this Lease is unmodified and in full force and effect, or if there have been modifications that the same is in full force and effect as modified and stating the modification, (ii) the dates to which Basic Rent, Additional Rent and other charges have been paid and the amount of same, (iii) to the best of knowledge of the certifying party whether there are any defaults or rent abatements or offsets claimed, and (iv) any other reasonable information including, but not limited to, the representations set forth in Section 2.1. Notwithstanding the foregoing, it is intended that any such statement delivered pursuant to this Section 15.1 may be relied upon by the Trustee, the Authority and any mortgagee or assignee of any mortgage of Landlord's interest in the Building, Building Office Space and/or the Demised Premises and the statement will contain such other information as is requested, and be in the form required, by such Trustee, Authority, mortgagee or assignee.

Section 15.2 If Tenant shall fail or otherwise refuse to execute an estoppel certificate in accordance with Section 15.1, then and upon such event, Tenant shall be deemed to have appointed Landlord and Landlord shall thereupon be regarded as the irrevocable attorney-in-fact of Tenant duly authorized to execute and deliver the required certificate for and on behalf of Tenant, but the exercise of such power shall not be deemed a waiver of Tenant's default.

## **ARTICLE XVI**

### **ASSIGNMENT AND SUBLETTING**

Section 16.1 Tenant shall not sell, assign, transfer, hypothecate, mortgage, encumber, grant concessions or licenses, sublet, or otherwise dispose of any interest in this Lease or the Demised Premises, by operation of law or otherwise, without the prior written consent of Landlord, which consent may be withheld, delayed or conditioned in Landlord's sole discretion, except if such assignment or transfer is by Tenant to any other agency or instrumentality of the State of New Jersey. Any consent granted by Landlord in any instance shall not be construed to constitute a consent with respect to any other instance or request. If the Demised Premises or any part thereof should be sublet, used, or occupied by anyone other than Tenant, or if this Lease should be assigned by Tenant, Landlord shall have the right to collect rent from the assignee, subtenant, user or occupant, but no such assignment, subletting, use, occupancy or collection shall be deemed a waiver of any of Landlord's rights under the provisions of this Section 16.1, a waiver of any of Tenant's covenants contained in this Article 16, the acceptance of the assignee, subtenant, user or occupant as tenant, or a release of Tenant from further performance by Tenant of Tenant's obligations under the Lease. For purposes of this Section 16.1, an assignment shall include any direct or indirect transfer of any interest in Tenant, this Lease or the Demised Premises by Tenant, including but not limited to a transfer pursuant to a merger, division, consolidation or liquidation, or pursuant to a change in ownership of Tenant involving a transfer of voting control in Tenant (whether by transfer of partnership interests, corporate stock or otherwise).

## **ARTICLE XVII**

### **CASUALTY**

Section 17.1 If there is any damage to or destruction of the Demised Premises, Tenant shall promptly give notice thereof to Landlord, describing the nature and extent thereof.

Section 17.2 If the Demised Premises are damaged, but no portion thereof is rendered untenantable, and this Lease is not terminated pursuant to Section 17.4, 17.5 or 17.6 hereof, Landlord shall cause the Restoration of the Demised Premises as soon as reasonably practicable, subject to the rights of the Developer under the Master Lease and the Trustee under the Bond Indenture, and the Basic Rent and Additional Rent shall not abate.

Section 17.3 If the Demised Premises are damaged or destroyed and are rendered partially or wholly untenantable, and this Lease is not terminated pursuant to Section 17.4, 17.5 or 17.6 hereof, Landlord shall cause the Restoration of the Demised Premises as soon as reasonably practicable, subject to the rights of the Developer under the Master Lease and the Trustee under the Bond Indenture, and the Basic Rent and Additional Rent shall not abate.

Section 17.4 If the Building is damaged or destroyed and the total cost of Restoration shall amount to twenty-five percent (25%) or more of the full insurable value of the Building, Landlord, in lieu of Restoration, may elect to terminate this Lease, provided that notice of such termination shall be sent to Tenant within sixty (60) days after the occurrence of such casualty, subject to the rights of the Developer under the Master Lease and the Trustee under the Bond Indenture. If Landlord exercises its right to terminate this Lease, this Lease shall cease, terminate and expire, and all Basic Rent and Additional Rent shall be prorated, as of the date of such termination.

Section 17.5 If the Building is damaged or destroyed and, in the reasonable opinion of Landlord, more than one hundred eighty (180) days are necessary to complete Restoration, or if during the final year of the Term the Demised Premises are damaged or destroyed and rendered partially or wholly untenantable, Landlord may elect to terminate this Lease provided notice of such termination shall be sent to Tenant within sixty (60) days after the occurrence of such casualty, subject to the rights of the Developer under the Master Lease and the Trustee under the Bond Indenture. If Landlord exercises its right to terminate this Lease, this Lease shall cease, terminate and expire, and all Basic Rent and Additional Rent shall be prorated, as of the date of such termination.

Section 17.6 Landlord shall not be required to expend for Restoration an amount in excess of (i) the Net Award received by it plus (ii) the amount of the deductible. In the event such amount is not adequate or the Trustee elects to retain the Net Award, Landlord shall have the right to terminate this Lease provided notice of such termination shall be sent to Tenant within sixty (60) days after the amount of such Net Award is ascertained, or after the date on which the Trustee notifies Landlord that it has elected to retain the Net Award, whichever the case may be. If Landlord exercises its right to terminate this Lease, this Lease shall cease, terminate and expire, and all Basic Rent and Additional Rent shall be prorated, as of the date of such termination.

Section 17.7 Landlord shall have the right to terminate this Lease if (a) more than fifty percent (50%) of the Demised Premises is rendered unusable as a result of fire or casualty, or (b) if more than thirty percent (30%) of the Demised Premises is rendered unusable as a result of any fire or casualty, subject to the rights of the Developer under the Master Lease and the Trustee under the Bond Indenture.

## **ARTICLE XVIII** **CONDEMNATION**

Section 18.1 Tenant hereby assigns to Landlord any award or payment to which Tenant becomes entitled by reason of any Taking of all or any part of the Demised Premises, whether the same shall be paid or payable in respect of Tenant's leasehold interest hereunder or otherwise, except that Tenant shall be entitled to any award or payment for the Taking of Tenant's trade fixtures or personal property or for loss of business, relocation or moving expenses provided. All amounts payable pursuant to any agreement with any condemning authority which have been made in settlement of or under threat of any condemnation or other eminent domain proceeding shall be deemed to be an award made in such proceeding. Tenant agrees that this Lease and the Master Lease shall control the rights of Landlord and Tenant in any Net Award and any contrary provision of any present or future law is hereby waived.

Section 18.2 In the event of a Taking of the whole of the Demised Premises, then the Lease shall cease and terminate as of the date when possession is taken by the condemning authority and all Basic Rent and Additional Rent shall be paid up to that date.

Section 18.3 In the event of a Taking of thirty (30%) percent or more of the Demised Premises, then, if Tenant shall determine in good faith and certify to Landlord that because of such Taking, continuance of its business at the Demised Premises would be uneconomical, Tenant may, at any time either prior to or within a period of sixty (60) days after the date when possession of such Demised Premises shall be required by the condemning authority, elect to terminate this Lease. In the event that Tenant shall fail to exercise any such option to terminate this Lease, or in the event of a Taking of the Demised Premises under circumstances under which Tenant will have no such option, then, and in either of such events, Landlord shall cause Restoration to be completed as soon as reasonably practicable, but in no case later than ninety (90) days after the date the condemning authority takes possession of such portion of the Demised Premises, subject to the rights of the Developer under the Master Lease and the Trustee under the Bond Indenture, and the Basic Rent and Additional Rent thereafter payable during the Term shall be equitably prorated based upon the square foot area of the Demised Premises and/or the Building actually taken.

Section 18.4 If (a) the Net Award is inadequate to complete Restoration of the Demised Premises, or (b) in the case of a Taking of thirty (30%) percent or more of the Demised Premises, Tenant has not elected to terminate this Lease pursuant to Section 18.3 hereof, then Landlord may elect either to complete such Restoration or terminate this Lease by giving notice to Tenant within sixty (60) days after (x) the amount of the Net Award is ascertained or (y) the expiration of the sixty (60) day period within which Tenant may terminate this Lease (as described in Section 18.3 hereof), whichever the case may be. In such event, all Basic Rent and Additional Rent shall be apportioned as of the date the condemning authority actually takes possession of the Demised Premises.

**ARTICLE XIX**  
**EVENTS OF DEFAULT**

Section 19.1 Any of the following occurrences, conditions or acts shall constitute an “Event of Default” under this Lease:

(a) If Tenant shall default in making payment when due of any Basic Rent, Additional Rent or other amount payable by Tenant hereunder, and such default shall continue for ten (10) days; or

(b) if Tenant shall fail to take actual occupancy of the Demised Premises within ninety (90) days after Landlord has notified Tenant that Substantial Completion has been achieved for the Finish Work or shall thereafter vacate the Demised Premises for a period in excess of sixty (60) days; provided, however, in the event Tenant is required to vacate the entire Demised Premises as a result of a casualty, an Event of Default shall not be deemed to have occurred unless Tenant fails to take actual occupancy of the Demised Premises within ninety (90) days after the Restoration has been substantially completed; or

(c) if the Demised Premises shall be abandoned by Tenant for a period of forty-five (45) consecutive days; or

(d) if Tenant shall file a petition in bankruptcy pursuant to the Bankruptcy Code or under any similar federal or state law, or shall be adjudicated a bankrupt or become insolvent, or shall commit any act of bankruptcy as defined in any such law, or shall take any action in furtherance of any of the foregoing; or

(e) if a petition or answer shall be filed proposing the adjudication of Tenant as a bankrupt pursuant to the Bankruptcy Code or any similar federal or state law, and (i) Tenant shall consent to the filing thereof, or (ii) such petition or answer shall not be discharged or denied within sixty (60) days after the filing thereof; or

(f) if a receiver, trustee or liquidator (or other similar official) of Tenant or of all or substantially all of its business or assets or of the estate or interest of Tenant in the Demised Premises shall be appointed and shall not be discharged within sixty (60) days thereafter or if Tenant shall consent to or acquiesce in such appointment; or

(g) if the estate or interest of Tenant in the Demised Premises shall be levied upon or attached in any proceeding and such process shall not be vacated or discharged within sixty (60) days after notice of such levy or attachment; or

(h) if Tenant shall default in the observance or performance of any provision of this Lease other than those provisions contemplated by clause (a) through (g), inclusive, of this Section 19.1, and such default shall continue for thirty (30) days after Landlord shall have given notice to Tenant specifying such default and demanding that the same be cured (unless such default cannot be cured by the payment of money and cannot with due diligence be wholly cured within such period of thirty (30) days, in which case Tenant shall have such longer period as shall be necessary to cure the default, so long as Tenant proceeds promptly to cure the same within such thirty (30) day period, prosecutes the cure to completion with due diligence and advises Landlord

from time to time, upon Landlord's request, of the actions which Tenant is taking and the progress being made).

## **ARTICLE XX**

### **CONDITIONAL LIMITATIONS; REMEDIES**

Section 20.1 On the occurrence and continuation of an Event of Default specified in Section 19.1, Landlord may, without further demand or notice, either:

(a) Terminate this Lease and take whatever action at law or in equity that may appear necessary or desirable to collect all Rent and other amounts payable by Tenant hereunder then due, and thereafter to become due (as such Rent and other amounts becomes due), with respect to the Demised Premises, until such time as Landlord may elect to take action under subsection (b) below, it being understood that Landlord's election to take action under this subsection (a) shall not prejudice Landlord's ability to later cease taking action under this subsection (a) and thereafter take action under subsection (b) below; or

(b) If, as a result of an Event of Default specified in Section 19.1, the Bonds are called for redemption pursuant to the terms of the Bond Indenture or the Loan Agreement, require Tenant to pay an amount equal to Tenant's Proportionate Share of the Principal Portion of all Outstanding Bonds together with Tenant's Proportionate Share of the accrued and unpaid Interest Portions thereon to the date the Bonds have been paid in full.

Section 20.2 Nothing herein contained shall limit or prejudice the right of Landlord, in any bankruptcy or insolvency proceeding, to prove for and obtain as liquidated damages by reason of such termination an amount equal to the maximum allowed by any bankruptcy or insolvency proceedings, or to prove for and obtain as liquidated damages by reason of such termination, an amount equal to the maximum allowed by any statute or rule of law whether such amount shall be greater or less than the excess referred to above.

Section 20.3 Except as otherwise provided in this Article 20, no right or remedy herein conferred upon or reserved to Landlord or Tenant is intended to be exclusive of any other right or remedy, and every right and remedy shall be cumulative and in addition to any other legal or equitable right or remedy given hereunder, or now or hereafter existing. No waiver by Landlord or by Tenant of any provision of this Lease shall be deemed to have been made unless expressly so made in writing. Landlord and Tenant shall be entitled, to the extent permitted by law, to injunctive relief in case of the violation, or attempted or threatened violation, of any provision of this Lease, or to a decree compelling observance or performance of any provision of this Lease, or to any other legal or equitable remedy.

## **ARTICLE XXI**

### **ACCESS**

Section 21.1 After the delivery of possession of the Demised Premises, Landlord, the Trustee and their respective representatives shall have the right to enter and/or pass through the Demised Premises upon reasonable advance written notice to Tenant at any time during normal business hours, accompanied by a Tenant representative and subject to Tenant's reasonable security requirements, to examine the Demised Premises; provided, however, that in the event of

an emergency threatening imminent peril to person or property, Landlord shall not be required to provide Tenant with written notice.

## **ARTICLE XXII**

### **ACCORD AND SATISFACTION**

Section 22.1 The receipt by Landlord of any installment of Basic Rent or of any Additional Rent with knowledge of a default by Tenant under the terms and conditions of this Lease shall not be deemed a waiver of such default. No payment by Tenant or receipt by Landlord of a lesser amount than the Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy in this Lease provided.

## **ARTICLE XXIII**

### **SUBORDINATION**

Section 23.1 This Lease and the term and estate hereby granted are and shall be subject and subordinate to the lien of each mortgage which may now or at any time hereafter affect all or any portion of the Premises or Landlord's interest therein and to all Master Leases which may now or at any time hereafter affect all or any portion of the Premises (any such mortgage or Master Lease being herein called an "Underlying Encumbrance"). The foregoing provisions for the subordination of this Lease and the term and estate hereby granted to an Underlying Encumbrance shall be self-operative and no further instrument shall be required to effect any such subordination; provided, however, at any time and from time to time, upon not less than ten (10) days' prior notice by Landlord, Tenant shall execute, acknowledge and deliver to Landlord any and all reasonable instruments that may be necessary or proper to effect such subordination or to confirm or evidence the same.

## **ARTICLE XXIV**

### **TENANT'S REMOVAL**

Section 24.1 Upon the expiration (if Tenant does not exercise the Purchase Option pursuant to Section 3.4) or earlier termination of this Lease, Tenant shall surrender the Demised Premises to Landlord in the condition same is required to be maintained under Article 7 of this Lease and broom clean. Any personal property which shall remain in any part of the Demised Premises after the expiration (if Tenant does not exercise the Purchase Option pursuant to Section 3.4) or earlier termination of this Lease shall be deemed to have been abandoned, and either may be retained by Landlord as its property or may be disposed of in such manner as Landlord may see fit; provided, however, that, notwithstanding the foregoing, Tenant will, upon request of Landlord made not later than thirty (30) days after the expiration or earlier termination of this Lease, promptly remove from the Demised Premises any such personal property.

## **ARTICLE XXV BROKERS**

Section 25.1 Landlord and Tenant each warrant and represent to the other that no real estate broker has initiated, negotiated or consummated this Lease as broker, agent or otherwise acting on behalf of either Landlord or Tenant. Each party acknowledges that the other is relying on this representation in executing this Lease. The provisions of this Article shall survive the expiration or sooner termination of this Lease.

## **ARTICLE XXVI NOTICES**

Section 26.1 All notices, demands, requests, consents, approvals, offers, statements and other instruments or communications required or permitted to be given hereunder (i) shall be in writing, (ii) shall be addressed as set forth below, or to such other address as either party shall designate to the other in writing, (iii) shall be delivered personally, or shall be sent by a nationally recognized overnight courier service, or shall be sent by first class registered or certified mail, postage prepaid, or shall be sent by email, and (iv) shall be deemed given hereunder (x) on the delivery thereof if sent by personal delivery or by a nationally recognized overnight courier service, (y) upon receipt or non-acceptance by the addressee if sent by first class registered or certified mail, or (z) if sent by email, upon the entrance of such email into the information processing system designated by the recipient's email address set forth below; provided, however, that if such actual delivery occurs after expiring at 5:00 PM (Eastern Time) (local time when received) or on a non-business day, then such email notice shall be deemed effective on the first business day after the date of actual delivery. All such notices, demands, requests, consents, approvals, offers, statements and other instruments or communications shall be addressed to the parties as follows:

If to Landlord:           HELIX NB LLC  
                                  c/o New Brunswick Development Corporation  
                                  120 Albany Street, Tower 1, 7th Floor  
                                  New Brunswick, New Jersey 08901  
                                  Attention: Christopher J. Paladino  
                                  Email: [cpaladino@devco.org](mailto:cpaladino@devco.org)

with notice to:           Windels Marx Lane & Mittendorf, LLP  
                                  120 Albany Street Plaza  
                                  New Brunswick, New Jersey 08901  
                                  Attention: Charles B. Liebling, Esq.

If to Tenant:             New Jersey Economic Development Authority  
                                  36 West State Street  
                                  P.O. Box 990  
                                  Trenton, New Jersey 08625  
                                  Attention: Juan Burgos  
                                  Email: [JBurgos@njeda.com](mailto:JBurgos@njeda.com)

with notice to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Email: \_\_\_\_\_

If to Trustee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Email: \_\_\_\_\_

## **ARTICLE XXVII**

### **NATURE OF LANDLORD'S OBLIGATIONS**

Section 27.1 Anything in the Lease to the contrary notwithstanding, except as set forth in Section 27.2, no recourse or relief shall be had under any rule of law, statute or constitution or by any enforcement of any assessments or penalties, or otherwise or based on or in respect of this Lease (whether by breach of any obligation, monetary or non-monetary), against Landlord, it being expressly understood that all obligations of Landlord under or relating to this Lease are solely obligations payable out of the Demised Premises and are compensable solely therefrom. It is expressly understood that all such liability is and is being expressly waived and released as a condition of and as a condition for the execution of this Lease, and Tenant expressly waives and releases all such liability as a condition of, and as a consideration for, the execution of this Lease by Landlord.

Section 27.2 Capital Reserve Account. (a) In the event that Landlord is in breach of its obligations set forth in Section 7.2 hereof, Tenant shall provide notice thereof and a reasonable opportunity to cure such default to Landlord, and Landlord shall commence to cure such breach within sixty (60) days of such notice. If such obligations are not satisfied by Landlord or a third party, including but not limited to Rutgers, as property manager, and such default results in all or a portion of the Demised Premises becoming unusable for commercial office occupancy, Tenant shall have the right to make demand for funds pursuant to the process set forth below from a segregated capital reserve account for the Building established pursuant to the process set forth below ("Capital Reserve Account") in order to enable Tenant to make those repairs and replacements necessary to render the Demised Premises usable for commercial office occupancy.

(b) Establishment and Security. (i) On or before the Commencement Date, Developer shall establish, and then fund as hereafter provided, the Capital Reserve Account, to be held by either (A) Magyar Bank or (B) another federally insured commercial bank to be mutually agreed upon by the Tenant and Landlord located in the State of New Jersey (the "Account Bank"). The Capital Reserve Account shall be maintained by Developer for the Term of the Lease and utilized by Landlord for customary expenses for the maintenance, repair, and replacement of the Building. Landlord shall provide notice to Tenant of Landlord's withdrawals from the Capital Reserve Account.

(c) Funding. On or before the Commencement Date, Developer shall deposit into the Capital Reserve Account the amount of \$2,000,000. Landlord shall include in the Landlord's Expense Statement for all tenants of the Building Office Space (including Tenant) an amount equal to \$0.40/sf of their respective Total Rental Space amounts, which Landlord shall pay over to Developer to deposit into the Capital Reserve Account when received or Landlord may make such deposits on behalf of Developer into the Capital Reserve Account.

(d) Interest Income. Any interest income earned on the Capital Reserve Account shall accrue within such Capital Reserve Account and contribute towards the Capital Reserve Account balance.

(e) Withdrawal. Upon Tenant having the right to demand funds from the Capital Reserve Account pursuant to Section 27.2, Tenant shall provide notice thereof from time to time to Landlord, which in turn, will notify Developer, in such amounts as reasonably determined by Tenant with supporting documentation. Developer shall evaluate such demand and, based on its reasonable conclusions, provide to Tenant a full or partial payment from the Capital Reserve Account within fifteen (15) business days from receipt of such notice, or, in the event that Developer concludes that Tenant's demand is without basis, provide notice within fifteen (15) business days from receipt of such notice that it declines to make such payment and the reason for such declination of payment. Each of Developer, Landlord and Tenant shall have the right to seek judicial relief with respect to any dispute arising under this Section 27.2.

(f) Close Out Procedure. Upon the expiration of the term of the leases for the Building, the remaining balance of the Capital Reserve Account shall be paid over to the Owners' Committee established pursuant to the Declaration for use in accordance with the Declaration.

Section 27.3 Developer Fee/Overhead Reimbursement. Landlord shall cause Developer to forego \$4,000,000 of its developer fee/overhead reimbursement for the Building and, as such, to not include the corresponding percentage thereof in the construction fund draws for the Building over the construction period for the Building, anticipated to be thirty-six (36) months. Further, Landlord represents that Developer has agreed to this provision.

## **ARTICLE XXVIII** **MISCELLANEOUS**

Section 28.1 No waiver by Landlord of any obligation of Tenant hereunder shall be deemed to constitute a waiver of the future performance of such obligation by Tenant. If any provision of this Lease or any application thereof shall be invalid or unenforceable, the remainder of this Lease and any other application of such provision shall not be affected thereby. This Lease shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto, except as provided in Article 15. Upon due performance of the covenants and agreements to be performed by Tenant under this Lease, Landlord covenants that Tenant shall and may at all times peaceably and quietly have, hold and enjoy the Demised Premises during the Term. The table of contents and the article headings are for convenience of reference only and shall not limit or otherwise affect the meaning hereof. Schedules A, B, C, D, E and F annexed hereto are incorporated into this Lease. This Lease will be simultaneously executed in several counterparts, each of which when so executed and delivered, shall constitute an original,

fully enforceable counterpart for all purposes. This Lease shall be governed by and construed in accordance with the laws of the State of New Jersey.

Section 28.2 Landlord shall have the right, at any time and from time to time, to request financial information from Tenant. Tenant agrees to deliver such financial information to Landlord within thirty (30) days after Tenant's receipt of said request so long as such information is reasonable and is readily available. Landlord agrees not to request such financial information more than one (1) time during each calendar year occurring during the Term.

Section 28.3 Landlord's failure during the Term to prepare and deliver any of the statements, notices or bills set forth in this Lease shall not in any way cause Landlord to forfeit or surrender its rights to collect any amount that may have become due and owing to it during the Term.

Section 28.4 (a) This Lease and the rights and obligations of Tenant and Landlord hereunder may be modified or amended from time to time and at any time by an amendment or a supplement hereto that Tenant and Landlord may enter into with the written consent of the Trustee, and the Owners (as defined in the Bond Indenture) of a majority in aggregate principal amount of the Bonds then Outstanding, filed with the Trustee; provided, however, that if such modification or amendment by its terms will not take effect so long as any Bonds remain Outstanding, the consent of the Owners of such Bonds shall not be required and such Bonds shall not be deemed to be Outstanding for the purpose of any calculation of Bonds Outstanding under this Section. Promptly after the execution by Tenant and Landlord of any amendment pursuant to this subsection (a), the Trustee, at the expense of Tenant, shall give notice by mail, setting forth in general terms the substance of such amendment to the Owners at the addresses listed on the registration books kept by the Registrar pursuant to Section \_\_\_\_\_ of the Bond Indenture. Any failure to give such notice or any defect therein, however, shall not impair or affect in any way the validity of any such amendment.

(b) Notwithstanding subsection (a) above, this Lease and the rights and obligations of Tenant and Landlord hereunder may be modified or amended from time to time and at any time by an amendment or a supplement hereto that Tenant and Landlord may enter into without the consent of the Trustee, or any Bondholders, provided that such modification or amendment shall be filed with the Trustee, and provided further that such amendment will not materially adversely affect the interests of the Owners of such Bonds, and only for any one or more of the following purposes:

(1) to add to the covenants and the agreements of Tenant and Landlord in this Lease, other covenants and agreements thereafter to be observed or to surrender any right or power herein reserved to or conferred upon Tenant or Landlord;

(2) to make such provisions for the purpose of curing any ambiguity, inconsistency or omission or of curing or correcting any defective provision contained in this Lease, provided such change shall not materially adversely affect the interests of the Owners of the Bonds;

(3) to provide for any additional procedures, covenants or agreements necessary to maintain the exclusion from gross income for Federal income tax purposes of the corresponding Interest Portion of the Basic Rent represented by the Bonds;

(4) to amend any provision of this Lease which, in the written opinion of Bond Counsel delivered to Landlord, Tenant and the Trustee, is no longer required, or to the effect that some further provision is required, to maintain the exclusion from gross income of the Owners for Federal income tax purposes of the Interest Portion of Basic Rent represented by the Bonds, upon which written opinion Landlord, Tenant and the Trustee may conclusively rely.

(5) to amend this Lease, prior to the issuance of the Bonds;

(6) to make any other amendments which do not materially adversely affect the interests of the holders of the Bonds (it being expressly understood between the parties that any amendment of any kind relating to the payment of Basic Rent shall be deemed to materially adversely affect the interests of the holders of the Bonds).

(7) Tenant shall provide notice to any Rating Agency (defined in the Bond Indenture) that has issued a rating with respect to Bonds at its principal corporate address in advance, if practicable, or if impossible, promptly following the effective date thereof, of any modification or amendment of this Lease pursuant to this subsection

Section 28.5 To the extent there is a conflict between the provisions of this Lease and the Bond Indenture, which conflict impacts upon the Bonds, the provisions of the Bond Indenture shall control and prevail.

Section 28.6 Notwithstanding anything to the contrary contained in this Lease, Landlord reserves the right, in its reasonable discretion, to modify or alter the Building Office Space from time to time, including, but not limited to, (i) further apportioning any Estate that is part of the Building Office Space; (ii) consolidating two or more Estates other than the Demised Premises unless Tenant consents thereto in writing; (iii) expanding, reducing and otherwise modifying or altering the Building Office Space from time to time, other than the Demised Premises unless Tenant consents thereto in writing; and (iv) relocating, expanding, reducing and otherwise modifying or altering the common areas located in the Building Office Space from time to time; provided, however, if, as a result of Landlord's exercise of its rights hereunder, the rentable square footage of the Building Office Space is reduced or increased, then, in either event, Landlord shall equitably adjust those expenses affected by such action.

Section 28.7 Tenant acknowledges that the Building may be financed in part through a grant of tax credits by the New Jersey Economic Development Authority under its Aspire program. Tenant authorizes Landlord to take all administrative actions necessary to preserve the effectiveness of the award of such credits, and will cooperate with Landlord in accomplishing same. Tenant shall permit, and take such actions as may be necessary to permit, the recording of any deed restrictions on the Demised Premises and Declaration Areas as may be required by the regulations governing the Aspire tax credit program.

Section 28.8 With respect to the operation and management of the HUB, Landlord shall create an operating committee (the “Operating Committee”), consisting of appointees designated by Landlord, Rutgers, NJEDA, Hackensack Meridian Health, Inc., RWJ Barnabas Health, Inc. and Middlesex County (each, an “Operating Committee Party”). Each Operating Committee Party shall appoint one (1) member to the Operating Committee (each, a “Committee Member” and collectively, the “Committee Members”). The Operating Committee Party who appointed a Committee Member shall have the right to remove and replace such Committee Member at any time, or to fill a vacancy created by the resignation of any Committee Member it appointed. The Operating Committee shall have the right and responsibility to review and approve, by vote of the Committee Members: (a) the programming and operating budgets for the HUB, (b) future major capital improvements and equipment acquisitions for the HUB, (c) disposition of any ownership interest in the HUB, and (d) retention of the manager of the HUB. The Operating Committee will provide advice to Landlord with respect to, and will meet regularly to discuss, matters relating to, the operation and management of the HUB, including: marketing plans, operating budget, programming budget and capital improvements to and maintenance of the HUB, with final decisions thereon being made by Landlord (including by Landlord’s managing member acting on behalf of Landlord). Landlord’s appointed Committee Member shall be the chairperson of the Operating Committee and shall organize, schedule in advance and run the meetings of the Operating Committee. The chairperson shall notify the Committee Members at least ten (10) business days in advance of a meeting, which notice will include an agenda for the meeting, except for emergency or special meetings for which forty-eight (48) hours’ prior notice must be given to the Committee Members. Meetings of the Operating Committee may be held in person at a place selected by the chairperson and/or by web conference (e.g., Zoom) or telephone conference. A majority of the Committee Members present at a meeting shall constitute a quorum and the vote of a majority of the Committee Members present at a meeting shall constitute the action of the Operating Committee. In the event that a Committee Member is not able to attend a meeting of the Operating Committee, the Committee Member may communicate its vote in writing by e-mail to the chairperson either in advance of the meeting or within five (5) business days after the meeting. The Operating Committee may also take action by unanimous written consent of the Committee Members in lieu of a meeting, which consent may be signed in counterparts and electronically (e.g., by DocuSign or Adobe Signature) and e-mailed signature pages shall be deemed to be original signatures. At such as time as an Operating Committee Party may no longer be associated with the HUB, its right to appoint a Committee Member to the Operating Committee and be represented thereby shall terminate; provided, however, that the loss of such right shall in no way affect Tenant’s obligations under this Lease.

Section 28.9 In the event Landlord amends its lease for office space in the Building with one of the other Core Partners such that the operative terms of such lease become more favorable to such Core Partner, this Lease will be deemed to have been amended to the same extent; provided, however, that this “most favored nation” provision shall not apply to the NJEDA Reimbursement Fund, Demised Premises, Proportional Declaration Areas Space, Basic Rent, and Tenant’s HUB Share, which terms have been specifically agreed to by Tenant.

Section 28.10 NJEDA shall have the right to reasonably review and approve the final total development budget for the Building prior to the start of Building construction. Such budget shall include all costs, including, but not limited to, the amount of Developer’s development fee and will be submitted by Developer to NJEDA as drafts are prepared and updated. Developer’s

development fee for the Project is not to exceed 2.5% of total development costs in the final budget and Developer's development overhead is not to exceed 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. For the purposes of this paragraph, the term "Developer" shall also apply to its sole member, New Brunswick Development Corporation.

Section 28.11 NJEDA shall provide its prior written consent and written approval of the Building specifications.

Section 28.12 Prior to the issuance of any additional debt (for example, a subsequent Bond issue under same initial Bond authorization) to finance budget shortfalls, Landlord shall cause NJIA to first expend its project contingency.

Section 28.13 Landlord shall require NJIA to commence construction of the HUB and Building Office Space within one year of completion of the final Project budget (which completion shall be by December 17, 2023) and to achieve final Building completion within five years of the commencement of construction.

#### Section 28.14 Campaign Contributions and Expenditures

(a) For the purposes of this Section 28.14, the following terms are defined as follows:

(i) "Contribution" means a contribution reportable as a recipient under "The New Jersey Campaign Contributions and Expenditures Reporting Act," L. 1973, c.83 (N.J.S.A.19:44A-1 et seq.), and implementing regulations set forth at N.J.A.C. 19:25-7 and N.J.A.C. 19:25-10.1 et seq., including a reportable contribution made to a legislative leadership committee, a contribution made to a municipal political party committee or a contribution made to a candidate committee or election fund or any candidate for or holder of the office of Lieutenant Governor. In accordance with N.J.S.A. 19:44A-8, contributions in excess of \$300 during a reporting period are deemed "reportable" under these laws.

(ii) "Business Entity" means:

(1) A for-profit entity as follows: (I) in the case of a corporation: the corporation, any officer of the corporation, and any person or business entity that owns or controls 10% or more of the stock of corporation; (II) in the case of a general partnership: the partnership and any partner; (III) in the case of a limited partnership: the limited partnership and any partner; (IV) in the case of a professional corporation: the professional corporation, any shareholder or officer; (V) in the case of a limited liability company: the limited liability company and any member; (VI) in the case of a limited liability partnership: the limited liability partnership and any partner; (VII) in the case of a sole proprietorship: the proprietor; and (VIII) in the case of any other form of entity organized under the laws of this State or other state or foreign jurisdiction: the entity and any principal, officer, or partner thereof;

(2) Any subsidiary directly or indirectly controlled by the business entity;

(3) Any political organization organized under section 527 of the United States Internal Revenue Code that is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and

(4) With respect to an individual who is included within the definition of Business Entity, such individual's spouse or civil union partner, and any child residing with the individual, provided, however, that, this shall not apply to a Contribution made by such spouse, civil union partner, or child to a candidate for whom the contributor is entitled to vote or to a political party committee within whose jurisdiction the contributor resides unless such Contribution is in violation of section 9 of L. 2005, c.51 (N.J.S.A. 19:44A-20.1 et seq.).

(iii) "PL 2005, c.51" or "Chapter 51" means Public Law 2005, chapter 51 (N.J.S.A. 19:44A-20.13 through 19:44A-20.25, inclusive) which codified "Executive Order 134", signed by former New Jersey Governor James E. McGreevey on September 22, 2004 as expanded by Executive Order 117 (Gov. Corzine, September 24, 2008).

(b) The terms, restrictions, requirements and prohibitions set forth in Chapter 51 are incorporated into this Lease by reference as material terms of this Lease with the same force and effect as if Chapter 51 were stated herein its entirety. Compliance with Chapter 51 by the Landlord shall be a material term of this Lease, including but not limited to the provision in N.J.S.A. 19:44A-20.14 prohibiting a contract between a State Entity and a Business Entity that has made certain past Contributions and which is satisfied by a review and determination of compliance by the Department of Treasury.

(c) In addition to any other Event of Default specified in this Lease, the Tenant shall have the right, but not the obligation, to declare an Event of Default under this Lease if: (i) the Landlord makes or solicits a Contribution in violation of Chapter 51; (ii) the Landlord knowingly conceals or misrepresents a Contribution given or received; (iii) the Landlord makes or solicits Contributions through intermediaries for the purpose of concealing or misrepresenting the source of the Contribution; (iv) the Landlord makes or solicits any Contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or to any State or county party committee; (v) the Landlord engages or employs a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any Contribution, which if made or solicited by the Landlord directly, would violate the restrictions of Chapter 51; (vi) the Landlord funds Contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) the Landlord engages in any exchange of Contributions to circumvent the intent of Chapter 51; (viii) the Landlord directly or indirectly through or by any other person or means, does any act which would violate the restrictions of Chapter 51; or (ix) any material misrepresentation exists in any Executive Order Certification and Disclosure which was delivered by the Landlord to the Tenant in connection with this Lease.

(d) The Landlord hereby acknowledges and agrees that pursuant to Chapter 51, the Landlord shall have a continuing obligation to report to the Office of the State Treasurer, EO 134 Review Unit of any Contributions Landlord makes during the term of this Lease. If after the Commencement Date, any Contribution is made by the Landlord and the Treasurer of the State determines such Contribution to be a conflict of interest in violation of Chapter 51, the Tenant shall have the right, but not the obligation, to declare an Event of Default under this Lease.

Section 28.15      Compliance with Affirmative Action and Anti-Discrimination Laws.

(a) The Parties to this Lease do hereby agree that the provisions of N.J.A.C. 17:27 as amended and supplemented, prohibiting discrimination in employment or public contracts, are hereby incorporated into and made a part of this Lease and are binding upon them.

(b) The Landlord agrees to comply and to require its contractors and subcontractors to comply with all provisions of the following: the Landlord or its contractors and subcontractors, where applicable, shall not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. The Landlord or its contractors and subcontractors shall take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Such action 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.

(c) The Landlord or its contractors and subcontractors, where applicable, agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer (as defined in N.J.A.C. 17:27-2.1) setting forth provisions of this nondiscrimination clause. The Landlord or its contractors and subcontractors, where applicable, shall state, in all solicitations or advertisements for employees placed by or on behalf of the contractors and subcontractors, that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. The Landlord or its contractors and subcontractors, where applicable, shall send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Public Agency Compliance Officer, advising the labor union or workers' representative of the contractor's or subcontractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Landlord or its contractors and subcontractors, where applicable, agree to comply with P.L. 1975, c.127, as amended and supplemented, the rules promulgated by the Treasurer pursuant thereto, including N.J.A.C. 17:27-1.1 et seq., as amended and supplemented.

(d) The Landlord or its contractors and subcontractors, where applicable, agree to attempt in good faith to employ minority and female workers consistent with the applicable county employment goals prescribed by N.J.A.C. 17:27-5.2, as amended and supplemented from time to time, or in accordance with a binding determination of the applicable county employment

goals determined by the Affirmative Action Office pursuant to N.J.A.C. 17:27-5.2, as amended and supplemented from time to time. The Landlord or its contractors and subcontractors, where applicable, agree to inform in writing appropriate recruitment agencies in the area, including employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, and that it shall discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

(e) The Landlord or its contractors and subcontractors, where applicable, agree to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms to the principles of job-related testing, as established by federal and State law. The Landlord or its contractors and subcontractors, where applicable, agree to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, sex, or affectional or sexual orientation, and conform with the applicable employment goals, consistent with federal and State law.

(f) The Landlord or its contractors and subcontractors, where applicable, shall furnish such reports or other documents to the Affirmative Action Office as may be requested by the office from time to time in order to carry out the purposes of this provision and applicable law.

(g) In the event of a breach or violation of the warranties contained in this Section 28.16 by the Landlord, the NJEDA shall have the right to declare a Landlord event of default.

(h) In the event of a breach or violation of the warranties contained in this Section 25.4 by the Landlord's contractors or subcontractors, the Landlord agrees to provide proof that the violation has been abated to the satisfaction of the agency enforcing said violation. In the event the Landlord fails to provide said proof of the abatement of the violation within 30 days of notice of said violation, the NJEDA shall have the right to declare a Landlord event of default.

Section 28.16 Prevailing Wages and Affirmative Action. In performing, requiring, or paying in whole or in part for, any work in connection with this Lease, under a construction contract, as that term is defined N.J.A.C. 19:30-3.1 and -4.1, for Landlord, it 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 Tenant in the construction contracts and subcontracts. Further, Landlord, and its contractors 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.

Section 28.17 State Record Keeping. (a) Landlord shall maintain all documentation related to products, transactions or services under this Lease for a period of five (5) years from the

final payment under the Lease. Such records shall be made available to the Tenant and the New Jersey Office of the State Comptroller upon request. Furthermore, Landlord acknowledges that relevant records of persons entering into contracts with Tenant are subject to audit or review by the Office of the State Comptroller pursuant to N.J.S.A. 52:15C-14(d).

(b) Tenant and the State reserve the right to audit the records of Landlord in connection with all matters related to this Lease. Landlord, agrees to maintain records for a period of not less than five (5) years after final payment under the Lease.

#### Section 28.18 NJEDA Funding Reimbursement.

(a) Background. The Parties acknowledge and agree that:

(i) (A) in order to facilitate the development of the Building, NJEDA and DEVCO formed a joint venture known as Downtown HUB Associates LLC, a New Jersey limited liability company (“DHA”), which, inter alia, funded a pre-payment of a portion of the purchase price of the Land in the amount of \$6,000,000 and funded \$4,000,000 for initial pre-development and development costs of the Building, for a total of \$10,000,000, and (B) that NJEDA and DEVCO entered into an Operating Agreement for DHA, dated December 17, 2021 (the “DHA Operating Agreement”) and that funding of the above-referenced \$10,000,000 (the “NJEDA Funding”) was the obligation of NJEDA, which obligation has been satisfied.

(ii) the NJEDA Funding is to be reimbursed to NJEDA by means of the creation of a fund in the amount of \$10,000,000 (the “NJEDA Reimbursement Fund”) for payment of NJEDA’s continuing obligations under (a) this Lease; and (b) the Project Support and Guaranty Agreement by NJEDA in favor of Landlord and the Authority, dated of even date hereof (the “PSGA”, a fully executed copy of which is attached hereto for reference as Exhibit A), which NJEDA Reimbursement Fund has been created simultaneously herewith, as further set forth below.

(iii) a portion of the Building is being financed with two (2) series of bonds (the Bonds and a series for the HUB (the “HUB Bonds”)) issued by the Authority pursuant to the Bond Indenture and a second indenture for the HUB Bonds, by and between the Authority and the Trustee, and the proceeds of the Bonds and the HUB Bonds are being loaned to NJIA pursuant to the Loan Agreements and a loan agreement for the proceeds of the HUB Bonds, respectively.

(iv) Landlord anticipates the generation of certain monthly revenues from the HUB sufficient for Landlord to pay programming, operating and maintenance costs of, and to otherwise support, the Project (“Monthly Revenues”).

(v) the moneys payable by NJEDA under this Lease and the PSGA (through the Sponsor Debt Service Obligation) are, respectively, sources of repayment for the Bonds and the HUB Bonds, and the moneys payable by NJEDA under the PSGA (through the Sponsor Monthly Revenues Obligation) is the source of payment for those costs for which the Monthly Revenues may be insufficient to offset.

(b) NJEDA Reimbursement Fund. Simultaneous with the full execution and delivery hereof, [NJIA] [NJEDA] [to be determined by bond counsel] hereby agrees to deposit with [Trustee][NAME OF BANK] [to be determined by Trustee] (the “Escrow Agent”), the amount of Ten Million Dollars (\$10,000,000) (the “Escrow Funds”) to establish the NJEDA Reimbursement Fund with the Escrow Agent, to be subject to the terms of that escrow agreement dated of even date herewith, by and among Escrow Agent, Landlord and NJIA, a fully executed copy of which is attached hereto for reference as Exhibit B (“Escrow Agreement”)[subject to approval by Escrow Agent]. As is stated in the Escrow Agreement, the Escrow Agent shall (i) deposit the Escrow Funds in an interest-bearing account at \_\_\_\_\_ Bank [Escrow Agent] entitled “NJEDA Reimbursement Fund Escrow Account” (the “Escrow Account”) and (ii) hold and disburse the Escrow Funds in accordance with the terms thereof. The Escrow Funds shall be invested in such obligations that constitute permitted investments for the proceeds of the [Bonds] [HUB Bonds], and the Escrow Agent shall deposit all interest earnings on the Escrow Funds into the Escrow Account. The Parties acknowledge and agree that the Escrow Agreement permits NJIA and Landlord, as applicable, to direct the release of Escrow Funds by Escrow Agent; provided, however, that NJIA and Landlord each agree that any actions taken by them under the Escrow Agreement shall comply with the terms of this Section 28.18.

(c) Notice Requirements. With respect to the direction to Escrow Agent by NJIA and/or Landlord to release Escrow Funds:

(i) Notice to Escrow Agent to release Escrow Funds for payment of Basic Rent, if necessary, shall be provided simultaneously to Tenant, with a copy of the transmittal of such payment to the Bond Trustee being sent by the Escrow Agent simultaneously to Tenant; provided, however, that the Escrow Agreement shall permit Escrow Agent to release Escrow Funds for payment of Basic Rent pursuant to Schedule B hereof, without the requirement of notice by NJIA or Landlord;

(ii) Notice to Escrow Agent to release Escrow Funds for payment of the Taxes due for the Total Rental Space shall be provided simultaneously to Tenant, with a copy of the transmittal of such payment to Landlord being sent by the Escrow Agent simultaneously to Tenant;

(iii) Notice to Escrow Agent to release Escrow Funds for payment of the Monthly Expense Payment shall be provided simultaneously to Tenant, with a copy of the transmittal of such payment to Landlord being sent by the Escrow Agent simultaneously to Tenant;

(iv) Notice to Escrow Agent to release Escrow Funds for payment of monies that are then due and payable by Tenant for Additional Rent shall only be given with the prior written consent of Tenant, with such consent to be granted in accordance with Tenant’s review rights under this Lease for such payments, when applicable, not to be unreasonably withheld, conditioned or delayed, and with a copy of the transmittal of such payment to Landlord being sent by the Escrow Agent simultaneously to Tenant;

(v) Notice to Escrow Agent to release Escrow Funds for payment of monies that are then due and payable by Tenant under the PSGA for the Sponsor Monthly Revenues Obligation shall only be given with the prior written consent of Tenant, with such consent not to be unreasonably withheld, conditioned or delayed, and with a copy of the transmittal of such payment to Landlord being sent by the Escrow Agent simultaneously to Tenant; and

(vi) Notice to Escrow Agent to release Escrow Funds for payment of monies that are then due and payable by Tenant under the PSGA for the Sponsor Debt Service Obligation shall only be given with the prior written consent of Tenant, with such consent not to be unreasonably withheld, conditioned or delayed, and with a copy of the transmittal of such payment to Bond Trustee being sent by the Escrow Agent simultaneously to Tenant.

(d) Purpose of Fund. NJEDA agrees that the NJEDA Reimbursement Fund is for the sole purpose of paying NJEDA's monetary obligations under the NJEDA Office Lease and the PSGA, to the extent that monies remain available in the NJEDA Reimbursement Fund, and that this Section 28.18 and the Escrow Agreement do not relieve NJEDA of any of its obligations under the Lease and the PSGA.

(e) Escrow Agent Fees. NJEDA agrees that Escrow Agent shall be entitled to debit the Escrow Account for all of its reasonable out-of-pocket expenses incurred from the performance of its services pursuant to the Escrow Agreement [, which amount shall not exceed \$ \_\_\_\_\_].

(f) DHA Termination. The Parties further acknowledge and agree that, simultaneously herewith, NJEDA and DEVCO have executed a unanimous consent terminating the DHA Operating Agreement and that DEVCO is authorized to file with the State a Certification of Dissolution of DHA.

[Rest of page intentionally left blank]

**IN WITNESS WHEREOF**, the parties have executed this Lease as of the date first above written.

LANDLORD:

**HELIX NB LLC**

By: New Brunswick Development Corporation,  
its sole member

BY: \_\_\_\_\_  
Name: Christopher J. Paladino  
Title: President

TENANT:

**NEW JERSEY ECONOMIC DEVELOPMENT  
AUTHORITY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Developer signs below to indicate its agreement to the provisions of Sections 6.8, 7.6, 7.7, 27.2, 27.3, and 28.18 of this Lease.

**NJ INNOVATION ASSOCIATES URBAN RENEWAL LLC**

By: New Brunswick Development Corporation, Sole Member

By: \_\_\_\_\_  
Christopher J. Paladino  
President

SCHEDULE A

LEGAL DESCRIPTION OF LAND

All that land and premises situate, lying and being in the City of New Brunswick,  
County of Middlesex, and State of New Jersey, more fully described as follows:

SCHEDULE A-1

LEGAL DESCRIPTION OF DEMISED PREMISES

PROPOSED BLOCK \_\_\_, LOT \_\_\_, QUALIFIER C000 \_\_\_  
CITY OF NEW BRUNSWICK, MIDDLESEX COUNTY, NEW JERSEY

All that estate in the area above the surface of the ground of property located in the City of New Brunswick, County of Middlesex and State of New Jersey, more particularly described as follows:

All that area located between two imaginary horizontal planes and bounded by imaginary vertical planes (perpendicular to the horizontal planes) as further described as follows:

**TO BE PROVIDED**

## SCHEDULE B

### BASIC RENT

The Basic Rent shall be payable in equal monthly installments, in advance, when due in accordance with the following schedule:

**[TO BE PROVIDED]**

SCHEDULE C

FLOOR PLAN

## SCHEDULE D

### FINISH WORK

1. Tenant hereby advises Landlord that Tenant desires Landlord to renovate the Demised Premises in accordance with the schematic drawings and preliminary outline specification annexed to this Lease as Schedule E (collectively, the "Preliminary Drawings"). Landlord hereby acknowledges that it has reviewed and approved the Preliminary Drawings.

2. (a) As soon as reasonably practicable (but in no event later than sixty (60) days after the execution and delivery of this Lease by Landlord and Tenant), Landlord shall submit to Tenant, for Tenant's approval (which approval shall not be unreasonably withheld), architectural and engineering working drawings and specifications for the subdivision, layout and finish of the Demised Premises. The scope of Tenant's review shall be limited to whether the working drawings and specifications conform to the Preliminary Drawings. Tenant shall notify Landlord, within ten (10) business days after Tenant's receipt of the working drawings and specifications, whether Tenant disapproves of any work shown thereon; said notice shall specify in reasonable detail why such disapproved work does not conform to the Preliminary Drawings. If Tenant fails to notify Landlord of any disapproved work within said ten (10) business day period, then Tenant shall be deemed to have approved the working drawings and specifications. If Tenant notifies Landlord of any disapproved work within said ten (10) business day period, and if Landlord and Tenant agree upon modifications to said drawings and specifications, then the working drawings and specifications, as modified, shall be deemed approved; however, if Landlord and Tenant are unable to agree upon modifications to the working drawings and specifications, then Landlord shall have the right (i) to complete the work shown on the working drawings and specifications approved by Tenant and (ii) with respect to those items of work disapproved by Tenant, to complete such disapproved items in the manner contemplated by the Preliminary Drawings. For the purposes of this Lease, the term "Final Plans" shall mean the working drawings and specifications (including any modifications thereto) approved by Landlord and Tenant; provided, however, if Tenant has disapproved any work shown on the working drawings and specifications and Landlord and Tenant are unable to resolve the dispute, then the term "Final Plans" shall mean the work shown on the working drawings and specifications which has been approved by Landlord and Tenant and, with respect to the items of work disapproved by Tenant, the work contemplated by the Preliminary Drawings.

(b) Landlord, as promptly as is practicable after receiving the necessary governmental approvals required for the commencement of construction, shall, through a contractor or contractors to be engaged by it for such purpose, proceed with due dispatch, subject to any Excusable Delay, to do all the work shown on the Final Plans (such work being herein called the "Finish Work").

3. (a) If, after the approval of the Final Plans, Tenant desires to amend, change or modify the Final Plans, then Tenant shall submit to Landlord for its approval (which approval shall not be unreasonably withheld) a reasonably detailed description of the proposed amendment, change or modification (hereinafter referred to as a "Change"). Within five (5) business days after receipt of the Change, Landlord shall notify Tenant whether the Change has

been approved or disapproved. If such Change is approved, then such Change shall be deemed part of the Final Plans and the work shown thereon shall be deemed part of the Finish Work (said approval notice being hereinafter referred to as a "Change Order"); if such change is disapproved, Landlord's notice shall set forth the reasons for such disapproval.

(b) Tenant shall reimburse Landlord, as Additional Rent, for all architectural and engineering fees and disbursements incurred by Landlord in connection with any Change within thirty (30) days after Tenant's receipt of a statement itemizing such costs and expenses.

4. (a) Landlord shall pay the cost of all Finish Work to the extent such Finish Work is within the scope of the Preliminary Drawings. In the event any portion of the Finish Work is beyond the intent and scope of the Preliminary Drawings (such portion being herein called the "Extra Work"), Landlord will, prior to proceeding with the Extra Work, submit to Tenant a statement of the Costs (as defined in Paragraph 4(b) hereof) of the Extra Work and the terms and conditions on which such Extra Work is to be performed, including, if known, the effect upon the Commencement Date. Tenant shall approve or disapprove such statement within ten (10) days after receipt thereof, and, if any matters shown thereon are disapproved, shall specify in writing the particulars of any such disapproved items. If Tenant fails to approve or disapprove such statement of Costs and of terms and conditions within said ten (10) day period, Tenant shall be deemed to have approved the same.

(b) The term "Costs", as used herein with respect to the Extra Work, shall mean the additional costs and charges set forth in Landlord's statement of Costs in having such work done by a contractor or contractors under the supervision of Landlord, including all construction costs and charges, permit and inspection fees, and the reasonable fees of any architects and engineers whose services may be required by Landlord because of the nature of the Extra Work.

(c) Tenant shall pay such Costs as Additional Rent hereunder in two installments, the first installment within twenty (20) days after Tenant approves, or is deemed to have approved, the statement of the Costs of such Extra Work in an amount equal to one-half (1/2) of said Costs and the second installment within thirty (30) days, subject to standard retainage, after substantial completion of such Extra Work or Tenant's taking possession of the Demised Premises, whichever first occurs, in an amount equal to the balance of such Costs of all Extra Work then due and owing. If as a result of (i) changes in or additions to the Extra Work requested by Tenant or (ii) delays caused by Tenant or Tenant's Visitors, Landlord incurs additional costs and expenses in connection with the Extra Work, Tenant shall pay to Landlord the amount of such additional costs and expenses at the time of the payment of the second installment of the Costs.

SCHEDULE E

PRELIMINARY DRAWINGS

## SCHEDULE F

### PERMITTED ENCUMBRANCES

1. **[To be added from Schedule B-II of Title Commitment, subject to Tenant's approval.]**
2. All matters caused by Tenant, its agents, employees and contractors.

EXHIBIT A

PROJECT SUPPORT AND GUARANTY AGREEMENT BY NJEDA

EXHIBIT B

ESCROW AGREEMENT

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**PROJECT SUPPORT AND GUARANTY AGREEMENT**

**From**

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

**in favor of**

**HELIX NB LLC**

**and**

**MIDDLESEX COUNTY IMPROVEMENT AUTHORITY**

**Dated as of: \_\_\_\_\_, 2023**

## **PROJECT SUPPORT AND GUARANTY AGREEMENT**

**THIS PROJECT SUPPORT AND GUARANTY AGREEMENT**, dated this \_\_\_\_ day of \_\_\_\_\_, 2023 (this “Project Support Agreement”) by **NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**, a body corporate and politic of the State of New Jersey, with an address at 36 West State Street, P.O. Box 990, Trenton, New Jersey 08625 (the “Sponsor”), in favor of **HELIX NB LLC**, a New Jersey limited liability company with an address at c/o New Brunswick Development Corporation 120 Albany Street Plaza, New Brunswick, New Jersey (“Helix”) and the **MIDDLESEX COUNTY IMPROVEMENT AUTHORITY** (the “Authority”), a public body corporate and politic constituting an instrumentality of the State of New Jersey having offices at 101 Interchange Plaza, Cranbury, New Jersey 08512.

**WHEREAS**, the Authority has by resolution, duly adopted in accordance with \_\_\_\_\_ (the “Act”) on \_\_\_\_\_, 2023, (the “Resolution”) authorized the issuance of \$ \_\_\_\_\_ aggregate principal amount of its \_\_\_\_\_ (\_\_\_\_\_), Series \_\_\_\_\_ (the “Bonds”) for the purpose of making a loan to NJ Innovation Associates Urban Renewal, LLC, an affiliate of Helix (the “Borrower”) to finance the costs of the Project (as defined below); and

**WHEREAS**, the Authority has entered into a Trust Indenture dated as of \_\_\_\_\_, 2023 (the “Indenture”) wherein the Authority has assigned certain of its rights under the Loan Agreement (as defined below) and this Project Support Agreement to \_\_\_\_\_, with an address at \_\_\_\_\_, the Trustee under the Indenture (the “Trustee”) for the benefit of the Holders from time to time of the Bonds which Indenture and the definitions contained therein, are incorporated herein by reference; and

**WHEREAS**, pursuant to a certain Loan Agreement dated as of \_\_\_\_\_, 2023, (the “Loan Agreement”) by and between the Authority and the Borrower, the Authority has agreed, subject to the terms and conditions specified therein, to make a loan to the Borrower in the amount of \$ \_\_\_\_\_ (the “Loan”) for the purpose of financing the construction of a portion of the costs for the initial phase of the New Jersey Innovation HUB project, consisting of approximately 133,000 square feet over certain floors in an twelve-story state-of-the-art structure located in New Brunswick, New Jersey (the “Project”); and

**WHEREAS**, the Borrower has leased the Project to Helix, and Helix will be licensing, or selling memberships in, certain innovation space within the Project for individual or business users that otherwise qualify and are approved for the such membership by Helix consisting of approximately 60,000 square feet (the “Innovation Space”); and

**WHEREAS**, to facilitate the construction of the Project, the financing thereof and to support the Project’s operations, the Sponsor has determined to enter into and execute this Project Support Agreement, hereby guarantying the full, prompt and unconditional payment of sufficient revenues to support the Innovation Space allocated to the Sponsor (the “Sponsor Innovation Space”), including, but not limited to, the payment when due of a certain portion of the principal and interest payment obligations of the Borrower owing to the Authority in accordance with the

Loan Agreement and the Note of the Borrower to the Authority dated \_\_\_\_\_, 2023 (the “Note”), as described herein;

**NOW, THEREFORE, IN CONSIDERATION OF THE LOAN MADE TO THE BORROWER AND TO FACILITATE THE SUCCESS OF THE PROJECT, THE SPONSOR HEREBY ABSOLUTELY AND UNCONDITIONALLY, REPRESENTS, WARRANTS AND COVENANTS AS FOLLOWS:**

1. (a) The Sponsor hereby guaranties the full, prompt and unconditional payment to Helix of [\_\_\_\_\_] % of the amounts set forth on the attached Schedule 1 as the same shall be amended by the Borrower from time to time to reflect the then current budget as approved by the [Core Partner Operating Committee]. The Schedule 1 amounts correspond to Helix’s projected monthly revenues from the Project (“Monthly Revenues”), which Monthly Revenues are projected to be sufficient for Helix to pay programming, operating and maintenance costs of, and to otherwise support, the Project. The amounts calculated by applying the foregoing percentage to such Schedule I amounts are referred to herein as the “Sponsor Monthly Revenues Obligation”. For the purposes of clarity, the Sponsor Monthly Revenues Obligation corresponds to the portion of Monthly Revenues allocated to the Sponsor Innovation Space.

(b) The Sponsor hereby guaranties the full, prompt and unconditional payment to Helix of [\_\_\_\_\_] % of the amounts set forth on the attached Schedule 2. The Schedule 2 amounts correspond to the principal and interest payments owing by the Borrower to the Authority under the terms of the Note, including any redemption premium and interest due on the Bonds on any redemption date, now existing or hereafter incurred. The amounts calculated by applying the foregoing percentage to such Schedule 2 amounts are referred to herein as the “Sponsor Debt Service Obligation”.

(c) The Sponsor Monthly Revenues Obligation and the Sponsor Debt Service Obligation are referred to herein collectively as the “Obligations”. The Sponsor hereby acknowledges and agrees the Authority will be assigning this guaranty with respect to the Sponsor Debt Service Obligation to the Trustee for the benefit of the Holders of the Bonds on the date hereof.

(d) This Project Support Agreement is a primary, general obligation of the Sponsor and shall be a continuing, irrevocable Project Support Agreement that can be terminated only in accordance with the provisions of Section 22 hereof.

2. This Project Support Agreement has been duly authorized and executed by the Sponsor and is the legal, valid and binding obligation of the Sponsor, enforceable against the Sponsor in accordance with its terms, subject to the limitation that the enforceability of this Project Support Agreement may be limited by bankruptcy or other laws relating to or limiting creditors’ rights generally and the application of general principles of equity.

3. To assure the timely payment of the Sponsor Debt Service Obligation when due, the Sponsor hereby agrees that upon receipt by the Sponsor of a payment request from the Trustee, substantially in the form annexed hereto as Exhibit A or Exhibit B, the Sponsor will make payment on or before the due date set forth in such payment request(s) of the amount(s) set forth therein in

immediately available funds to the Trustee. [ALTERNATIVELY THIS PORTION MAY BE REQUIRED TO BE PAID DIRECTLY INTO A DEBT SERVICE FUND HELD BY THE TRUSTEE ON OR BEFORE THE DATES SUCH DEBT SERVICE PAYMENTS ARE DUE]

4. To assure the timely payment of the Sponsor Monthly Revenues Obligation when due (but no more often than monthly), the Sponsor hereby agrees that upon receipt by the Sponsor of a payment request from Helix, substantially in the form annexed hereto as Exhibit C, the Sponsor will make payment on or before the due date set forth in such payment request(s) of the amount(s) set forth therein in immediately available funds to Helix. Any such payment request shall be presented otherwise at the discretion of the Borrower, and not necessarily on a monthly basis.

5. The Sponsor waives notice of acceptance of this Project Support Agreement and waives notice of any liability of the Borrower or Helix to which such waiver may apply, and, except as required by Section 3 above and Section[s] \_\_\_\_ of the Indenture, waives notice of default, nonpayment, partial payment, presentment, demand, protest, notice of protest or dishonor and all other notices to which the Sponsor might otherwise be entitled, or which might be required by law and required to be given by the Authority and/or the Trustee except those which have been held to be not waivable by a court of competent jurisdiction.

6. The Sponsor's liability hereunder is irrevocable and unconditional and shall be in no way affected, diminished or released by (a) any amendment, change or modification of the provisions of the Loan Agreement, the Note or any other instrument made to or with the Authority by the Borrower or Helix so long as any such amendment, change or modification does not increase the principal amount of the Loan or the stated interest rate thereon or accelerate the time for payment of any principal or interest with respect thereto or release the Authority's lien on any collateral of the Borrower or Helix, or (b) any extensions of time for performance required thereby, or (c) the release of the Borrower or Helix from performance or observation of any of the agreements, covenants, terms or conditions contained in any of said instruments by the Authority or by operation of law, whether made with or without notice to the Sponsor, except the Borrower's obligation to repay the Loan. This is a guaranty of payment when due, not just a guaranty of collection or enforcement.

7. Except as provided in Section 6(a) above, without incurring responsibility to the Sponsor and without impairing or releasing the obligations of the Sponsor hereunder, the Authority and/or the Trustee may at any time and from time to time without the consent of, or notice to the Sponsor, upon any terms or conditions and in whole or in part:

(a) change the manner, place or terms of payment and/or change or extend the time for payment or renew or alter, any liability of the Borrower and the guaranty herein made shall apply to the liability of the Borrower as so changed, extended, renewed or altered;

(b) sell, exchange, release, surrender, realize upon or otherwise deal with in any manner and in any order any property by whomsoever at any time pledged, mortgaged or in which a security interest is given to secure, or howsoever securing, the liability of the Borrower; provided, that any proceeds of the Bonds held by the Trustee as part of the Trust Estate shall be applied prior to a request for payment hereunder;

(c) exercise or refrain from exercising any rights against the Borrower, Helix or others (including the Sponsor) or otherwise act or refrain from acting;

(d) settle or compromise any liability of the Borrower or Helix with or without consideration, or any liability incurred directly or indirectly in respect thereof or hereof, provided that any such compromise with consideration shall not increase the principal amount of the Loan or the stated interest rate thereon or accelerate the time for payment of any principal or interest with respect thereto; or

(e) apply any sums by whomsoever paid or howsoever realized to any liability of the Borrower or Helix, provided, that, any sums received by the Authority and/or the Trustee from the Sponsor shall be applied only to the payment of the principal and interest due under the Note.

8. No invalidity, irregularity or unenforceability of all or any part of the liability of the Borrower or Helix whether caused by any actions or inactions of the Authority and/or the Trustee, or otherwise, shall affect, impair or be a defense to this Project Support Agreement.

9. SUBJECT TO SECTION 6(a) HEREOF, THIS PROJECT SUPPORT AGREEMENT CONSTITUTES THE SPONSOR'S UNCONDITIONAL UNDERTAKING WITH RESPECT TO THE PAYMENT OF THE OBLIGATIONS. THE SPONSOR AGREES THAT IT SHALL NOT ASSERT ANY CLAIM OR SET-OFF, DEFENSE, RECOUPMENT OR COUNTERCLAIM WHICH MAY BE ASSERTED BY SPONSOR, BORROWER OR HELIX OF ANY SORT WHATSOEVER AGAINST THE AUTHORITY'S AND/OR THE TRUSTEE'S ENFORCEMENT OF THIS PROJECT SUPPORT AGREEMENT AT ANY TIME NOR SHALL IT SEEK TO IMPAIR, LIMIT OR DEFEAT IN ANY WAY ITS OBLIGATIONS HEREUNDER. THE SPONSOR HEREBY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING OF ANY KIND OR NATURE, ARISING UNDER OR BY REASON OF OR RELATING TO THIS PROJECT SUPPORT AGREEMENT. NOTHING IN THIS SECTION IS INTENDED TO LIMIT OR WAIVE ANY OF SPONSOR'S SUBROGATION OR OTHER RIGHTS THAT SPONSOR MAY HAVE AGAINST ANY PARTY, OTHER THAN AS SET FORTH ABOVE,

10. The Sponsor hereby waives any right or claim of right to require the Authority and/or the Trustee to proceed against the Sponsor, the Borrower or Helix in any particular order, and the Sponsor hereby waives any and all legal requirements that the Authority and/or the Trustee may institute any action or proceedings at law or in equity against the Borrower or Helix, or anyone else, with respect to the Note, the Loan Agreement or with respect to any other Loan Document as a condition precedent to bringing any action against the Sponsor under this Project Support Agreement, provided the Authority and/or the Trustee shall have otherwise complied with the terms of the Indenture and this Project Support Agreement.

11. The Sponsor represents and warrants to the Authority and the Trustee that the due execution and performance of the terms of this Project Support Agreement will not and do not contravene or constitute a breach of or a default under any agreement, instrument or undertaking whatsoever to which the Sponsor is a party or by which the Sponsor is bound.

12. Until termination, this Project Support Agreement is made and shall continue as to the Obligations without regard to the existence of other guaranties, if any, or to the validity or effectiveness of any and all thereof. Any and all such guaranties may, from time to time, without notice to or consent of the Sponsor, be released, surrendered, exchanged, settled, compromised, waived, subordinated or modified, with or without consideration, on such terms and conditions as may be acceptable to the Authority and/or the Trustee without in any manner affecting or impairing the liability of the Sponsor.

13. Upon the occurrence and during the continuance of any Event of Default pursuant to the Loan Documents, and at any time thereafter, the Authority and/or the Trustee may, to the extent so provided in such Loan Documents, without notice to the Borrower or Helix or any aforesaid person, make the liability of the Borrower or Helix immediately due and payable hereunder as to the Sponsor, and the Authority and/or the Trustee shall be entitled to enforce payment of the Obligations hereunder, including but not limited the Sponsor Debt Service Obligation; provided that any right of setoff or statutory lien of the Authority and/or the Trustee shall not extend or attach to any property of the Sponsor now or at any time hereafter in the possession of or under the control of the Authority and/or the Trustee in any capacity whatsoever, as security for this Project Support Agreement. The Sponsor's payment obligations hereunder are not secured by any property or assets of the Sponsor.

14. If a claim is ever made upon the Authority and/or the Trustee or the Holders of the Bonds for repayment or recovery of any amount or amounts received by the Authority and/or the Trustee or the Holders of the Bonds in payment for, or on account of, any of the Sponsor Debt Service Obligation, and, the Authority and/or the Trustee repays all or part of said amount to the Sponsor by reason of (a) any judgment, decree or order of any court or administrative body having jurisdiction over the Authority and/or the Trustee or any of their respective property, or (b) any settlement or compromise of any such claim affected by the Authority and/or the Trustee with any such claimant (including the Borrower and Helix), then, and in such event, the Sponsor agrees that any such judgment, decree, order, settlement or compromise shall be binding upon the Sponsor, notwithstanding the cancellation of the Note or any other instrument evidencing any liability of the Borrower or Helix, and the Sponsor shall be and remain liable to the Authority and/or the Trustee hereunder for the amount so repaid or recovered by the Sponsor to the same extent as if such amount had never originally been received by the Authority and/or the Trustee.

15. Settlement of any claim by the Authority and/or the Trustee against the Borrower or Helix, whether in any proceeding or not, and whether voluntary or involuntary, shall not reduce the amount due under the terms of this Project Support Agreement.

16. No delay on the part of the Authority and/or the Trustee in exercising any of its rights, powers or privileges or partial or single exercise thereof under the Loan Documents, this Project Support Agreement or any other document made to or with the Authority and/or the Trustee by the Borrower shall operate as a waiver of any such privileges, powers or rights. No waiver of any of its rights hereunder, and no modification or amendment of this Project Support Agreement, shall be deemed to be made by the Sponsor, Authority or the Trustee unless the same shall be in writing, duly signed on behalf of the Sponsor, Authority and the Trustee, by their duly authorized officers, and each such waiver, if any, shall apply only with respect to the specific instance involved, and shall in no way impair the rights of the Authority and/or the Trustee or the

obligations of the Sponsor to the Authority and/or the Trustee in any other respect at any other time. No waiver of any of its rights hereunder, and, except as provided in Section 21 hereof, no modification or amendment of this Project Support Agreement, shall be made if the same results in a downgrade of the rating on the Bonds at the time of such proposed amendment. Notice shall be given to Moody's Investors Service prior to any waiver of any right of the Authority and/or the Trustee hereunder, or any modification or amendment of this Project Support Agreement.

17. All rights, powers and remedies afforded to the Authority and/or the Trustee by reason of this Project Support Agreement are separate and cumulative remedies and no one of such remedies whether or not exercised by the Authority and/or the Trustee shall be deemed to exclude any of the other remedies available to the Authority and/or the Trustee nor prejudice the availability of any other legal or equitable remedy which the Authority and/or the Trustee may have with respect to the Loan.

18. It will at all times preserve and maintain its corporate existence, rights, privileges and franchises, continue to conduct its business in accordance with its enabling act at N.J.S.A. 34:1B-1 et seq. and other applicable law, or Sponsor's rights, duties, and obligations are assigned by law to another State entity.

19. The Sponsor represents that any financial statements heretofore delivered to the Authority are true and correct in all material respects, fairly represent the Sponsor's financial condition as of the respective dates thereof, and no material adverse change has occurred in the Sponsor's financial condition reflected therein since the date thereof. The Sponsor agrees that it shall promptly notify the Authority and the Trustee in writing of the occurrence of any material adverse change in its financial condition.

20. (a) This Project Support Agreement shall be construed and interpreted in accordance with, and all disputes hereunder shall be governed by, the laws of the State of New Jersey; and (b) the parties agree that (i) any and all claims made or to be made against the Sponsor based in contract law shall be governed by and subject to the provisions of the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. and (ii) any and all claims for damages made or to be made against the Sponsor based in tort law, including but not limited to, costs and expenses, shall be governed by and subject to the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq.

21. This Project Support Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective administrators, successors and assigns, provided the Sponsor shall not assign this Project Support Agreement if such assignment will negatively impact the rating on the Bonds. In the event any provision of this Project Support Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render any other provision hereof unenforceable.

22. Except as otherwise provided in Section 13, this Project Support Agreement shall terminate upon the earlier of (a) the maturity date of the Bonds and (b) the date on which the Bonds are redeemed or defeased in full in accordance with the terms of the Indenture.

23. All notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served when presented personally or five (5) days after their deposit in the mail, by registered or certified mail, addressed to the Authority, the Trustee and the Sponsor at their respective addresses shown at the head of this Project Support Agreement.

24. In case of any proceedings to collect any liabilities of the Sponsor hereunder, the Sponsor shall be obligated to pay all costs and expenses of every kind for collection, sale or delivery, including reasonable attorneys' fees, in the event the moving party prevails against the Sponsor, and after deducting such costs and expenses from the proceeds of sale or collection, the Borrower, the Authority and/or the Trustee shall apply any remaining moneys to the Obligations.

25. The Sponsor shall not exercise any rights which it may have acquired by way of subrogation under this Project Support Agreement or any rights of contribution by reason of any payments made hereunder or otherwise until the payment in full of all unpaid Obligations then due and owing. Notwithstanding the foregoing, if the Sponsor shall receive any monies by reason of the exercise of such rights of subrogation or contribution prior to the payment in full of any unpaid Obligations then due and owing, such amounts shall be paid by the Sponsor directly to the Borrower or the Trustee as applicable.

26. In all references herein to any parties, persons, entities or corporations, the use of any particular gender or the plural or singular number is intended to include the appropriate gender or number as the text of the within instrument may require.

27. A copy of all notices to the Sponsor shall be sent to the address first set forth above, unless amended in a written instrument sent to the Authority and the Trustee.

28. The parties acknowledge and agree that monies payable by Sponsor hereunder may be paid from an escrow account established by a certain Escrow Agreement (NJEDA Reimbursement Fund) of even date herewith, pursuant to the terms thereof, until the escrowed funds governed thereby are depleted.

[The remainder of this page intentionally left blank. Signatures to follow.]

**IN WITNESS WHEREOF**, the Sponsor has caused this Project Support Agreement to be executed as of the day and year first above written.

ATTEST:

**NEW JERSEY ECONOMIC DEVELOPMENT  
AUTHORITY**

\_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

Acknowledged & Agreed:

**MIDDLESEX COUNTY IMPROVEMENT  
AUTHORITY**

By: \_\_\_\_\_  
Name:  
Title:

**HELIX NB LLC**

By: \_\_\_\_\_  
Name:  
Title:

**NJ INNOVATION ASSOCIATES URBAN  
RENEWAL LLC**

By: \_\_\_\_\_  
Name:  
Title:

**Schedule 1**  
**Revenues**

**Schedule 2**  
**Sponsor Debt Service**

**Exhibit A**

**Principal Payment Request**

New Jersey Economic Development Authority  
36 West State Street, P.O. Box 990  
Trenton, New Jersey 08625  
Attention: \_\_\_\_\_

Re: Project Support and Guaranty Agreement dated as of \_\_\_\_\_, 2023 for the benefit of  
the  
[Borrower]

Ladies and Gentlemen:

The undersigned, an Authorized Officer of \_\_\_\_\_ as trustee (the "Trustee") pursuant to a Trust Indenture, dated as of \_\_\_\_\_, 2023 by and between the Middlesex County Improvement Authority and the Trustee (the "Indenture") hereby certifies to New Jersey Economic Development Authority (the "Sponsor") with reference to the above-referenced Project Support and Guaranty Agreement that:

- (1) The Trustee is the trustee under the Indenture for the holder of the Bonds.
- (2) Pursuant to Section \_\_\_\_ of the Indenture, the Trustee has determined that a deficiency exists in the [Debt Service Fund] with respect to the principal payment due on the Bonds due on [\_\_\_\_\_]. See the attached Exhibit 1 showing the balance in the [Debt Service Fund] on the date hereof as well as the amount required to be on deposit in such fund to make the next scheduled principal payment on the Bonds. Accordingly, the Trustee is making a request for payment under the above-referenced Project Support and Guaranty Agreement in the amount of \$\_\_\_\_\_ with respect to the payment of principal of the Bonds (such amount being limited to \_\_\_\_% of the principal on the Bonds now due).
- (3) Upon receipt by the undersigned of the amount demanded hereby:
  - (a) The undersigned will apply the same directly to the payment when due of the principal owing on account of the Bonds pursuant to the Indenture, and
  - (b) No portion of said amount shall be applied by the undersigned for any other purpose, and
  - (c) No portion of said amount shall be co-mingled with other funds held by the undersigned.
- (4) The individual signing below on our behalf hereby represents that he or she is duly authorized to so sign on behalf of the Trustee.

All capitalized terms not otherwise defined herein shall have the meaning given thereto in the Indenture.

IN WITNESS WHEREOF, the Trustee has executed and delivered this Certificate as of the day of \_\_\_\_\_, 2023.

\_\_\_\_\_, as Trustee

By: \_\_\_\_\_  
Title:

## EXHIBIT 1

**Exhibit B**

**Interest Payment Request**

New Jersey Economic Development Authority  
36 West State Street, P.O. Box 990  
Trenton, New Jersey 08625  
Attention: \_\_\_\_\_

Re: Project Support and Guaranty Agreement dated as of \_\_\_\_\_, 2023 for the benefit of  
the  
[Borrower]

Ladies and Gentlemen:

The undersigned, an Authorized Officer of \_\_\_\_\_ as trustee (the "Trustee") pursuant to a Trust Indenture, dated as of \_\_\_\_\_, 2023 by and between the Middlesex County Improvement Authority and the Trustee (the "Indenture") hereby certifies to New Jersey Economic Development Authority (the "Sponsor") with reference to the above-referenced Project Support and Guaranty Agreement that:

- (1) The Trustee is the trustee under the Indenture for the holder of the Bonds.
- (2) Pursuant to Section \_\_\_\_ of the Indenture the Trustee has determined that a deficiency exists in the [Debt Service Fund] with respect to the interest payment due on the Bonds due on [\_\_\_\_\_]. See the attached Exhibit 1 showing the balance in the [Debt Service Fund] on the date hereof as well as the amount required to be on deposit in such fund to make the next scheduled interest payment on the Bonds. Accordingly, the Trustee is making a request for payment under the above-referenced Project Support and Guaranty Agreement in the amount of \$\_\_\_\_\_ with respect to the payment of interest on the Bonds (such amount being limited to \_\_\_\_% of the interest on the Bonds now due).
- (3) Upon receipt by the undersigned of the amount demanded hereby:
  - (a) The undersigned will apply the same directly to the payment when due of the interest owing on account of the Bonds pursuant to the Indenture, and
  - (b) No portion of said amount shall be applied by the undersigned for any other purpose, and
  - (c) No portion of said amount shall be co-mingled with other funds held by the undersigned.
- (4) The individual signing below on our behalf hereby represents that he or she is duly authorized to so sign on behalf of the Trustee.

All capitalized terms not otherwise defined herein shall have the meaning given thereto in the Indenture.

IN WITNESS WHEREOF, the Trustee has executed and delivered this Certificate as of the day of \_\_\_\_\_, 2023.

\_\_\_\_\_, as Trustee

By: \_\_\_\_\_  
Title:

## EXHIBIT 1

**Exhibit C**

**Monthly Revenues Obligation Request**

New Jersey Economic Development Authority  
36 West State Street, P.O. Box 990  
Trenton, New Jersey 08625  
Attention: \_\_\_\_\_

Re: Project Support and Guaranty Agreement dated as of \_\_\_\_\_, 2023 for the benefit of  
the  
[Borrower]

Ladies and Gentlemen:

Helix NB LLC (“Helix”) hereby certifies to New Jersey Economic Development Authority (the  
“Sponsor”) with reference to the above-referenced Project Support and Guaranty Agreement that:

- (1) Helix has determined that a deficiency exists in the Monthly Revenues. See the attached Exhibit 1 showing the balance in the [Monthly Revenues Account] on the date hereof as well as the amount required to be on deposit in such account to satisfy those obligations to be paid from the Monthly Revenues. Accordingly, Helix is making a request for payment under the above-referenced Project Support and Guaranty Agreement representing your Sponsor Monthly Revenues Obligation in the amount of the \$\_\_\_\_\_.
- (2) Upon receipt by the undersigned of the amount demanded hereby:
  - (a) The undersigned will apply the same directly to the payment when due of the amount owing on account of your Sponsor Monthly Revenues Obligation, and
  - (b) No portion of said amount shall be applied by the undersigned for any other purpose, and
  - (c) No portion of said amount shall be co-mingled with other funds held by the undersigned.
- (3) The individual signing below on our behalf hereby represents that he or she is duly authorized to so sign on behalf of Helix.

IN WITNESS WHEREOF, Helix has executed and delivered this Certificate as of the day of \_\_\_\_\_, 2023.

HELIX NB LLC

By: \_\_\_\_\_  
Title:

## EXHIBIT 1

## **MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**Date:** March 8, 2023

**Subject:** Agreements for Payment in Lieu of Taxes (PILOT)

PROD-00188309  
Taxation Building (“Taxation Building”)  
3 John Fitch Way  
Block 10701, Lots 1, 2 and 3,  
City of Trenton, County of Mercer

PROD-00300470  
Judith M. Persichilli Building (“Health Building”)  
55 North Willow Street  
Block 3503, Lots 7.01, 7.02, 7.03 and a portion of Lot 7  
City of Trenton, County of Mercer

### **Summary**

I request the Members approve entering into two Payment in Lieu of Taxes (“PILOT”) agreements with the State of New Jersey, Department of Treasury (“State”) and the City of Trenton (“City”) for the Taxation Building and the Health Building in Trenton.

### **Purpose**

In accordance with Executive Order 40, Treasury and the Authority are committed to playing an active role in supporting Trenton on achieving its vision of revitalization and prosperity as set forth in the City of Trenton’s Master Plan. Treasury and Authority are exempt from paying property taxes but support Trenton’s revitalization which is aided through the payments in lieu of taxes.

### **Background**

#### *1. Relevant Prior Board Actions*

In September of 2016 the Board approved as amended, Memorandum of Understandings between the State and the Authority (“MOUs”), to undertake predevelopment work with respect to the Health Department and Taxation Division buildings projects. The Authority agreed to finance certain predevelopment services costs of the Health Department and Taxation Division projects as set forth in the MOUs.

In December 2017, The State authorized proceeding with the final design and specifications and construction of the Health Department and Taxation Division projects and the Members approved the issuance of one or more series of tax-exempt or taxable bonds to be secured pursuant to by the lease and sublease agreements between the State and the Authority for each building with the State.

## *2. Status of Construction*

Construction permitting occupancy of the buildings was complete and certificates of occupancy for each building were issued as follows:

- Taxation Building: July 14, 2021
- Health Building: August 20, 2021

Health and Taxation staff occupy the buildings.

## *3. The PILOT Agreements*

At this time, the State desires to make PILOT payments to the City for each building as excerpted below from Section 1 of each of the PILOT agreements:

- A. The Authority agrees to pay to the City payments in lieu of taxes (the “PILOT”) for each of the Taxation Building and the Health Building to the extent such funds are appropriated and available:

\$1,000,000 to the City annually beginning on January 1, 2023, payable upon the later of January 1, 2023 or the Effective Date. On July 1 of each subsequent year the PILOT shall be increased by two (2%) percent. The PILOT shall compound annually until the PILOT amount reaches \$1,250,000, at which point the PILOT will be capped.

- B. The Authority shall be under no obligation to pay the PILOT, except to the extent that Treasury pays the PILOT to the Authority. The obligation of Treasury’s Division of Property Management and Construction to make PILOT payments is subject to appropriation by the State Legislature and the availability of funds. Neither the Authority, nor Treasury shall have any obligation to utilize any other funds, to make PILOT payments hereunder beyond those specifically appropriated each fiscal year for PILOT payments. Treasury’s Division of Property Management and Construction and EDA shall coordinate the payment of the PILOT to the City.

The City will bill the Authority for the PILOT payments. As noted in the agreement, “the State and the Authority shall coordinate payments to the City.”

Attached as Exhibit A and B to this memo are the two PILOT agreements which are in substantially final form. The final Agreements may be subject to revisions, although the basic terms and conditions will remain consistent with the current form of Agreements.

Staff recommends entering into the agreements because the Authority has no obligation to pay the PILOT if the State does not fund the payment on annual basis.

**Recommendation**

In summary, I request that the Members approve entering into the two PILOT agreements with the State and City for the recently completed Health and Taxation buildings in the City of Trenton.



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Tim Sullivan, CEO

Attachments: Exhibit A: Taxation Building PILOT Agreement

Exhibit B: Health Building PILOT Agreement

Prepared by: Cathleen A. Hamilton



## **MEMORANDUM**

**TO:** The Members of the Authority

**FROM:** Tim Sullivan, CEO

**RE:** Incubator Occupancy Extension for SPES Pharma

**DATE:** March 8, 2023

### **Summary**

I ask the Members to approve an additional five-month occupancy extension for SPES Pharma, an Incubator tenant, due to its difficulty finding available graduate lab space at other locations in Central New Jersey. This extension will allow the company additional time to secure graduate space.

### **Background**

#### *1. The Incubator*

The New Jersey Bioscience Center (Center) is a 50-acre, six building research park in North Brunswick owned and operated by NJEDA. The park consists of approximately 300,000 rentable square feet of laboratory and related office space.

The Center includes several different levels of offerings to support life science companies at all different stages of development. The first offering for the newest businesses is the Incubator at North Brunswick - a 44,000 square foot facility with 27 wet labs and access to shared equipment and business support services.

SPES has been a tenant in the Incubator since October 1, 2017. There have been four one year leases and their additional 18-month month-to-month extended occupancy period will expire at the end of March, 2023.

#### *2. The Current Post Incubation Laboratory Market*

Within the Center, there are four laboratory suites, ranging between 5,000 and 15,000 rentable square feet, as well as the Step Out Labs, a 32,000 square foot suite available to rent on an la carte basis to Incubator graduates and other life science firms that are beyond the initial business development stage. Currently the Center has no laboratory vacancies in any of the post incubation offerings.

As reflected in several lab real estate reports, including a recent 2022 study by CBRE, biopharma demand continues to grow for lab space and the vacancy rate for available laboratory space continues to decline. This is especially true for companies seeking modest amount of lab space (less 8,000 rentable square feet) such as SPES Pharma.

Unlike the post incubation lab market, incubator staff has observed that the very early stage incubator market is currently slow as prospective entrepreneurs appear to be in a cash preservation mode due to the current economic uncertainty. The Incubator at North Brunswick currently has five empty labs.

### *3. SPES Pharma Incubator Extension Request*

In 2017, SPES Pharma (SPES) was launched at the Incubator with a focus on research and development services and drug development. In 2019, SPES expanded into a second laboratory within the Incubator.

SPES' current product development target is an oncology drug that was originally developed by Merck. The company has completed in-house research and development and the product has advanced through a pre-investigational new drug application (pre IND) meeting with the United States Food and Drug Administration (FDA). Given the successful FDA meeting, SPES recently submitted a new drug application (NDA) to the FDA and their review is currently underway. The company has several other products in the pipeline that are all in different development stages. A laboratory is very important to SPES to maintain continuous development of its products.

SPES has represented that during the last several months it has been vigorously looking for lab space in central New Jersey from Bridgewater to East Windsor, including Deerpark, Hillsboro, Plainsboro, Bridgewater and others. The lab space for small pharmaceutical company, like SPES, is very much in demand and there is no availability. The good sign is the New Jersey biopharma economy is booming, however, it is frustrating for small pharmaceutical companies like SPES.

### *4. Staff Recommendation*

Staff recommends that the Members approve a one-time five-month extension to SPES Pharma to assist the company in finding new space. Given that incubator rent is subsidized by NJEDA, a 50% increase in rent is also recommended to bring the space more in line with the market rate rents of the Center. Staff believes this request will not negatively impact prospective Incubator tenants because there are currently laboratories available in the Incubator as current investment funds to the earliest stage start-up bioscience companies have recently slowed.

### **Recommendation**

The Members are requested to approve a one-time five-month Incubator occupancy extension, with rent increase, for SPES Pharma.



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Tim Sullivan, CEO



## **MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Tim Sullivan, Chief Executive Officer

**DATE:** March 8, 2023

**SUBJECT:** Economic Transformation Products  
Delegated Authority Approvals & Declinations Q4 2022  
**For Informational Purposes Only**

### **Angel Investor Tax Credit Program**

On January 31, 2013, the New Jersey Angel Investor Tax Credit Act was signed into law with Regulations approved by the Members of the Board in June 2013. The New Jersey Angel Investor Tax Credit Program (ATC) establishes credits against corporate business tax or New Jersey gross income tax. When the program was originally approved, the amount of the tax credit was 10%. In 2019, Governor Murphy approved an increase to the amount of the tax credit from 10% to 20%, with a 5% bonus for investors in either NJ certified women- or minority-owned businesses, or businesses located in a state-designated Opportunity Zone or New Markets Tax Credit census tract. Starting with the 2021 program year, the Angel Tax Credit program cap was increased from \$25 million to \$35 million.

### **Angel Tax Credit Program Summary 2022**

Sector	Investment Amount	Tax Credit Amount	Applications	# of Companies	% of Total Invested	% of Total Applications
Life Sciences	\$74,712,487	\$14,536,283	474	26	49.6	69.4
Technology	\$74,426,650	\$10,814,127	196	36	49.4	28.7
Clean Technology	\$1,624,709	\$406,178	13	2	1.1	3.1
Total	\$150,763,846	\$25,756,588	683	64		

The majority of applications in 2022 were still in the life science sector, though the percentage decreased from 82.5% in 2021 to 69.4% leading to an increase for Technology from 15.4% in 2021 to 28.7%. The average investment amount per application in the life science sector was \$157,621 and in the technology sector was \$379,727. There were 3 ATC application declinations in 2022. The total invested in each sector was nearly equal. Of note, 56 applications

were for investments over \$1,000,000 and the largest single investment being \$13,000,000.

### **Angel Investor Tax Credit Program – Q4 2022 Review**

In the fourth quarter of 2022, the Authority approved 147 ATC investor applications with 21 emerging technology businesses benefiting from the ATC program. Of the 21 different companies receiving investments, 2 of these were new companies to the program (noted below). Additionally, investors in 4 companies qualified for an additional 5% bonus, which represents 14% of companies for this quarter. Specifically, 1 were state-certified Minority Business Enterprise, and 3 businesses were located in an Opportunity Zone or New Market Tax Credit census tract. In total, \$3,166,473 in Angel Investor Tax Credits were awarded which incentivized \$18,020,510.20 in private sector investments into NJ emerging technology businesses.

Sector	Investment Amount	Tax Credit Amount	Applications	# of Companies	% of Total Invested	% of Total Applications
Life Sciences	\$10,599,509	\$2,154,773	131	11	58.8	89.1
Technology	\$7,121,001	\$936,700	15	9	39.5	10.2
Clean Technology	\$300,000	\$75,000	1	1	1.7	0.7
Total	\$18,020,510	\$3,166,473	147	21		

The following 21 companies were participants for the fourth quarter of 2022:

911Inform Holdings, Inc.: Based in Wall Township, NJ, is an emergency management software company that provides a platform to help emergency response teams better manage communication and connected building controls related to an emergency. The software also allows users to become compliant with specific Federal and State regulations requiring the exact location of a 911 call.

Aspargo Laboratories, Inc.: Based in Englewood Cliffs, NJ, is a life science corporation that commercializes a therapeutic approach to addressing a clinical need for drugs that treat erectile dysfunction.

BioAegis Therapeutics Inc.: Based in North Brunswick, NJ, is a private company commercializing groundbreaking discoveries in inflammation and infection.

Calamu Technologies: Based in Franklin Township, NJ, is an information technology company that has produced a scalable, automated data protection platform to prevent security breaches by using a multi-patented data engine that fragments and auto-heals data.

Ceptur Therapeutics Inc.: Based in Hillsborough Township, NJ, (FKA SilaGene), Ceptur is developing unique, differentiated genetic medicines for patients with rare diseases.

Curio Therapeutics, Inc.: Based in Princeton, NJ. Curio designs customized interventions to address women's healthcare at various stages of life, from the childbearing years to menopause, through their proprietary app technology. Their flagship product focuses on managing postpartum depression. Curio technology adopts a holistic approach, encompassing both physical and mental health conditions, and helping women connect with communities and providers.

Curio designs personalized information and interventions using an AI-driven model, adaptive learning, and evidence-based resources. (and is new to ATC)

Elucida Oncology, Inc.: Based in Bound Brook, NJ, is a biotechnology company focused on clinical research, development and subsequent commercialization of life-changing products based on the “Target or Clear” technology of the novel, ultra-small nanoparticle delivery platform.

Evergreen Theragnostics, Inc.: Based in Springfield, NJ, is a Contract Development and Manufacturing Organization (CDMO) servicing the radiopharmaceutical industry in developing early-stage molecules. Evergreen is also engaged in research and development of new diagnostic and therapeutic radiopharmaceutical products that it intends to market to US hospitals.

FKAWV, Inc.: Based in Chatham, NJ, formerly known as Which Ventures, is an Information Technology company whose primary project is developing and operating HomeKeepr, a specialized online marketplace for the home services sector. Through HomeKeepr, the company has built and continues to develop a suite of online tools for real estate agents, home service professionals, and homeowners to connect clients with local home service professionals through a unique referral system on their site, allowing them to support their local economies.

Inspirit Group, LLC: Based in Holmdel, NJ, DBA STOPIT is a technology company which develops and markets a technology platform to schools, colleges and universities, businesses and government. The technology platform consists of a mobile application which is a reporting tool and an incident management system which aggregates all reported instances and allows one to track and manage each incident until its ultimate resolution.

Ionic Water Technologies, LLC: Based in Hamilton, NJ, is developing and commercializing a proprietary method of water purification and desalination which uses electrical voltage to capture and wash away ionic contaminants, as well as a method for reusing carbon in the cleaning process (and qualifies for a bonus for operations in an opportunity zone or new markets tax credit census tract)

Lambent Data, Inc.: Based in Princeton, NJ. is developing ‘OurVisit™’, a research-based collaboration software platform and application focused on impacting early childhood development and behavioral health. The software is designed to improve the communication between social service agency heads, social workers, and families, with shared communication, goal setting, resources and data analytics to improve child outcomes and agency costs.

Modern Meadow, Inc: Based in Nutley, NJ, uses fermentation technology to produce animal-free proteins via a scalable and environmentally-responsible process. These proteins become the fundamental building blocks for materials and active ingredients with applications across multiple industries. Bio-F@rm™ is the proprietary application platform that shows the ability to engineer fermentation-based proteins. The platform combines Modern Meadow’s proprietary strain engineering, protein design, analytics, fermentation and downstream processing knowledge to produce tailored proteins with desired properties and functionality for various applications. The first expression of this platform is Bio-Coll@gen™, a powerful vegan, biocompatible, and safe bioactive which has been shown to stimulate the production of Collagen type III. Bio-Alloy™ is the company’s proprietary technology application platform that delivers

unique performance and sustainability to materials, leading to the development of multiple miscible blends with commercial applications. (and is new to ATC)

NanoTech Pharma, Inc.: Based in Hillsborough, NJ, specializes in nanomedicine development by converting the off-patent or patent-expiring market drugs into the proprietary, improved, and non-infringing NDA505(b)(2) or ANDA nanoparticle drug products, based on our in-house Nanotechnology Drug Delivery System Platforms. Its pipelines target innovative therapy for cancer, serious infections, and cardiovascular diseases

Neumentum, Inc.: Based in Summit, NJ, is a biotechnology company dedicated to becoming a leading non-opioid analgesic and neurology pharmaceutical company with 6 novel non-opioid products in development to treat pain, in around the world. The Company aims to address shortfalls of current pain management treatments by developing and commercializing effective and safe, non-opioid options without the risks of abuse, misuse, and diversion seen with opioids, or the opioid-induced side effects, including potentially life-threatening respiratory depression.

Nevakar Inc.: Based in Bridgewater, NJ. is a specialty pharmaceutical company focused on developing innovative products in the injectable and ophthalmic space.

POM Partners, Inc.: Based in Newark, NJ. provides an emergency communications portal solution for the higher education, healthcare, and enterprise industries (and qualifies for a bonus for operations in an Opportunity Zone or New Markets Tax Credit census tract).

Ricovr Healthcare, Inc.: Based in Princeton, NJ, is transforming oral diagnostics with a patented technology. Its first product is a highly sensitive, faster, non-invasive portable device to measure THC (psychoactive component of Cannabis) using saliva.

Shinkei Therapeutics, Inc.: Based in Princeton, NJ, is a clinical stage CNS (Central Nervous System) disorders focused pharmaceutical company using the 505(b)2 regulatory strategy to repurpose existing pharmaceutical products for faster and better patient outcome.

SunRay Scientific Inc.: Based in Eatontown, NJ. is a global technology company providing novel adhesive conductive solutions for advanced electronic packaging, including semiconductors packaging. (and qualifies for a bonus as a certified Women and Minority Business Enterprise).

Vaneltix Pharma Inc.: Based in Bound Brook, NJ, (FKA Urogen Pharmaceuticals) is a New Jersey based biopharmaceutical company that is developing treatments for urological disorders. (and qualifies for a bonus for operations in an Opportunity Zone or New Markets Tax Credit census tract)

From program inception in 2013 through Q4 of 2022, the Authority has approved 2,703 applications for tax credits representing over \$809 million invested in 134 New Jersey-based businesses.

Please find a detailed list of all ATC applications that were approved under delegated authority during the fourth quarter of 2022 in Exhibit A.

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## **NJ Ignite Program**

NJ Ignite offers grants to support the rent of early-stage technology and life science companies located in a NJ Ignite approved collaborative workspace. Grants vary in amount. The start-up must commit to work for a specified time at the collaborative space under established agreements in which the workspace will partner to forego an element of the rent to support the business.

As of January 7, 2021, the Governor signed into law the Economic Recovery Act of 2020 (ERA) which results in the creation of the NJ Ignite Statutory Program. To ensure continuous NJ Ignite program operations, specific changes were approved by the Board on May 12, 2021, so that the NJ Ignite Pilot Program conforms to the NJ Ignite Legislative Program as outlined in the ERA. These updates included moving the annual reporting deadline to the calendar year end from one year anniversary date, increasing the maximum benefit from \$15,000 to \$25,000, expanding the eligible industries to align with current NJEDA targeted industries, extending the earliest formation date from application date to seven years, and adding two more stackable bonuses for M/WBEs and foreign companies. Updated Regulations for the NJ Ignite Legislative Program created by the ERA are anticipated but their generation is subject to the availability of the NJEDA Legal Affairs department resources.

### **NJ Ignite Program – Q4 2022 Review**

While many workspaces were hopeful for new tenants, demand for space from companies which could be program eligible remains low. These work managers believe the continuous uncertainty caused by spiking cases of Covid-19 throughout the region is impacting the decisions of new businesses to take on physical spaces.

In the fourth quarter of 2022, staff continued conducting the required annual review of all approved workspaces. The review includes verification each workspace held at least eight eco-system building events throughout the year. Each workspace will also be required to submit a current certificate of liability insurance and tax clearance. Upon request for year-end reports, of the 18 workspaces, 1 withdrew from the program, 5 completed and submitted all documents, 5 have partially submitted the required docs, and 8 have been unresponsive. Annual reviews will continue in the first quarter of 2023.

There were no new Tenant Application Approvals and no new Workspace Approvals in the fourth quarter. There were also no NJ Ignite benefit disbursements made.

At the program's peak, there were 22 approved collaborative spaces approved for NJ Ignite. As of the end of Quarter 4 of 2022, 17 approved workspaces remain active. Explanations for NJ Ignite site withdrawals include executive decisions to not forego rent, the difficulty of holding events in spaces, and worksite closures. Staff has begun a program review for NJ Ignite to assess the program's performance, identify strengths and shortcomings, then provide recommendations for improvement.

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## **NJ Accelerate Program**

On February 11th, 2020, the NJEDA Board approved the pilot program NJ Accelerate. The total program budget is \$2.5 million. Through NJ Accelerate, the NJEDA seeks to provide early-stage businesses access to best-in-class Accelerator programs, enabling the tools and support to grow their businesses in the Garden State. The program provides up to \$250,000 of direct loan funding and up to six months of free rent to Approved Accelerator Graduates located in New Jersey. Graduates certified as women- or minority-owned can receive an additional 5% bonus to the direct loan amount, as well as one additional month of rent. Approved Accelerators may also receive sponsorship of up to \$100,000 to produce events in NJ to encourage their on-the-ground engagement in the State. Also, a sponsorship bonus of 5% is available for Approved Accelerators demonstrating meaningful written policies and practices for attracting and promoting companies owned by women and minority persons.

The Authority began accepting applications to become an approved accelerator during fourth quarter of 2020. On November 12<sup>th</sup>, 2020, Morgan Stanley Multicultural Innovation Lab became the first approved accelerator. The Authority approved Cleantech Open Northeast on April 13<sup>th</sup>, 2021, becoming the second approved accelerator, followed by VentureWell's Aspire program which was approved on May 14<sup>th</sup>, 2021. In the third quarter 2021, University City Science Center's Launch Lane Accelerator was approved to participate in the Program on September 1<sup>st</sup>, 2021. HAX LLC is the most recent Accelerator program approved for participation in NJ Accelerate on April 4<sup>th</sup>, 2022.

### **NJ Accelerate Program Approved Accelerators**

<b>Accelerator Name</b>	<b>Accelerator Location</b>
Morgan Stanley Multicultural Innovation Lab	New York City, NY
Cleantech Open Northeast	Boston, MA
VentureWell - Aspire Program	Hadley, MA
University City Science Center - Launch Lane Accelerator	Philadelphia, PA
HAX LLC	Newark, NJ

### **NJ Accelerate Program – Q4 & 2022 Year End Review**

Reviews and discussions with accelerator programs and their company participants continued throughout 2022. No new accelerator programs were approved for NJ Accelerate in the fourth quarter of 2022. In 2022, HAX LLC was added to the NJ Accelerate program in the second quarter. With HAX, the total amount of accelerator programs approved for NJ Accelerate increased to five. Also, a rent benefit application was approved for Princeton Nu Energy, CleanTech Open graduate, in the third quarter.

The loan benefit for NJ Accelerate does not currently have Delegated Approval Authority. Application recommendations are submitted to the NJEDA Board of Directors for final approval. Staff will submit a request to the Board for delegated approval authority for the loan benefit in 2023. In the fourth quarter of 2022, Renovate Robotics loan benefit application was approved by the board. Renovate Robotics is a graduate from HAX. With the approval of Renovate Robotics,

five graduate companies received approval for loan benefit applications including ABF Creative Inc. (graduate of Morgan Stanley Multicultural Innovation Lab), Arke Aeronautics LLC (graduate of Launch Lane), EnvoyatHome Inc. (graduate of Launch Lane), and Princeton NuEnergy (graduate of Cleantech Open Northeast). Of these five, only EnvoyatHome completed the closing process and receive the NJ Accelerate loan benefit. The other four companies declined to move forward with closing and withdrew due to receiving new financing from outside investors/capital sources or concerns around meeting program requirements.

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### **New Jersey Zero-emission Incentive Program (NJ ZIP)**

In January 2021, the Members of the Board approved a \$15,750,000 pilot program called NJ ZIP, the New Jersey Zero-emission Incentive Program, funded from New Jersey Economic Development Authority's (NJEDA) allocation of the Regional Greenhouse Gas Initiative (RGGI) auction proceeds. Launched in April 2021, the NJ ZIP pilot established a first-come, first-served voucher-style program to reduce the upfront cost to purchase zero-emission vehicles for eligible applicants, with a focus on the adoption and use of zero-emission medium-duty vehicles in the greater Newark and greater Camden areas.

The primary goals of this pilot program are to:

- Accelerate the adoption and use of medium duty zero-emission vehicles in New Jersey;
- Reduce emissions within the pilot communities, greater Newark and greater Camden;
- Allow NJEDA to determine and stimulate market-readiness, assess effectiveness of funding levels and program design, and test methodologies for measuring economic impact of such adoption.

Based on the results of the pilot program (e.g., program uptake, efficacy, and continued market need), and assuming continued availability of RGGI funds allocated to this program, a longer-term program with expanded eligibility may be proposed after the pilot funds are fully reserved.

In addition to delegated authority to approve and decline applicants to the program, the Members of the Board also approved in January 2021 delegated authority to “the CEO to, based upon program demand reviewed at 3-month intervals, (i) shift funding allocations, (ii) adjust voucher amounts, (iii) select additional eligible communities, and (iv) expand the pilot program to a maximum of \$25 million.” After a program review, and as outlined in the Q3 Delegations Memorandum, the NJEDA CEO approved on September 28, 2021 the expansion of the pilot program to a total of \$25,000,000 and add the greater New Brunswick area as an additional eligible community. Finally, at the November 2021 Board, a further expansion of the NJ ZIP pilot was approved, adding an additional \$20,000,000 of voucher funding and expanding eligibility to the greater Shore area.

In May 2022, based on the results and feedback on the pilot, the Board approved action to extend certain voucher deadlines due to the on-going supply chain crisis caused by COVID-19.

Finally, in late June 2022, NJ ZIP passed the threshold of \$42.75M in applications received, which was the internal trigger to move applications to a waitlist. As such, the purchaser application for NJ ZIP moved to submission to waitlist for this phase of the pilot, wherein applicants are not charged an application fee unless moved from waitlist to a submitted application.

In July 2022, the Board approved a second phase of the NJ ZIP pilot, with a voucher pool of \$45M, administrative fees (at a rate of 3.5% or \$1.575M), and additional funding for the creation of a technical assistance program. The second phase is intended to test new program functions, features, and eligibility, based on learnings from the first phase. While the overarching structure of the pilot will remain unchanged, the second phase of this pilot will include two major eligibility changes from the first phase – to expand eligibility to include heavy-duty vehicle classes and to Purchaser Applicants statewide – and will provide updated support structures for pilot participants, including the development of a technical assistance mechanism. In addition, a number of small yet impactful changes will be made based on stakeholder feedback, including adjustment of voucher funding levels and extending voucher duration to account for the on-going supply chain crisis. The voucher application and technical assistance are anticipated to launch in early 2023.

Further, on October 19, 2022, an administrative clarification was noted via an Operational Memo to file. This clarified a single reference within the July 2022 memorandum which mistakenly cited “\$575,000” as the administrative fees rather than the accurately and elsewhere noted “\$1,575,000”.

### **New Jersey Zero-emission Incentive Program – Q4 2022 & 2022 Year End Review**

NJ ZIP is administered in sequential steps. First, a zero-emission vehicle vendor must submit an application to become an approved vendor. Once approved, a vehicle purchaser may submit an application to receive an NJ ZIP voucher to purchase a qualified vehicle from their selected approved vendor. This voucher that may be redeemed for a specific dollar amount after completion of the total vehicle purchase. The value of the voucher ranges from \$25,000 to \$100,000 per vehicle depending on the vehicle’s weight class. Additional bonus amounts can be added to the voucher if certain conditions are met by the purchaser, such as by being a small or micro-business, or by the vendor, such as by manufacturing 25% or more of the vehicle in NJ. For the purposes of this Program, a small business is defined as having 25 or fewer full-time employees in total or less than \$5M in annual revenue.

In Q4 2022, no new zero-emission vehicle vendors were approved to participate in NJ ZIP, and approved Vendors remained at 16. In Q4 2022, 18 new purchaser waitlist submissions were made to the Program and were all moved from waitlist to submitted status. Inclusive of waitlist submissions that have transitioned to submitted applications, the total submitted purchaser applications is 279. Of these, 24 purchaser applications were approved in Q4 2022 for a total of \$3,010,000.00 across 31 vouchers. These 24 purchasers’ 30 vouchers support the addition of 30 zero-emission medium-duty vehicles on New Jersey roads once the vouchers are redeemed, supplied by 4 different vendors. In Q4 2022, 100% of the approved purchaser applicants are small businesses (receiving a 25% funding bonus) and 84% are minority-, woman-, and/or veteran-owned (receiving an additional \$4,000 bonus per vehicle per qualifying certification); all Q4 2022 approved applicants will operate and/or register their vehicles within the greater Camden (4 purchasers), greater Newark (12 purchasers), greater New Brunswick (11 purchasers), or greater Shore (1 purchasers) areas. One applicant withdrew from the program in Q4, because the vendor was unable to procure and deliver the vehicle. The remaining applications received through the

end of the fourth quarter are currently under review by staff. In total, eleven approved vouchers have been redeemed as of the end of the Q4 2022, totaling \$3,674,250.00.

In 2022, NJZIP received 99 new applications and approved 202, with 8 remaining applications in review in 2023. The program's 202 approvals support 323 electric medium and heavy-duty vehicles from 5 vendors. In 2022, NJ ZIP Vouchers supported 99.0% small businesses and 62.3% minority-, women-, or veteran- owned businesses. All approved applicants will operate and/or register their vehicles within the greater Camden (4 purchasers), greater Newark (36 purchasers), greater New Brunswick (23 purchasers), or greater Shore (139 purchasers) areas. In 2022, the program has disbursed 22 vouchers in 2022 for a total of \$4,480,250.00 for 3 vendors.

These vouchers for medium duty vehicles will support the estimated 8,098.12 tons of CO2 avoided annually, and an estimated 121,468.93 short tons of CO2 emissions avoided over the project's lifetime.

### **New Jersey Zero-emission Incentive Program Q4 2022 Results**

<b>Purchaser Applicant</b>	<b>Vendor</b>	<b>Purchaser Location</b>	<b>SBE</b>	<b>MBE</b>	<b>WBE</b>	<b>VBE</b>	<b># of Vehicles</b>	<b>Voucher Approved \$</b>
Daniela's Event Design & Party Rental LLC	GreenPower Motor Company, Inc.	Greater New Brunswick	Yes	Yes	Yes		1	\$101,750
LaGuelaGuetza Mexican Grocery LLC	GreenPower Motor Company, Inc.	Greater New Brunswick	Yes	Yes			1	\$97,750
Medallo Construction Inc	Adomani Inc	Greater Newark	Yes	Yes			1	\$97,750
Variedades Pochtlan and Produce LLC	GreenPower Motor Company, Inc.	Greater New Brunswick	Yes	Yes	Yes		1	\$101,750
Industry Providers & Buyers LLC	GreenPower Motor Company, Inc	Greater Newark	Yes	Yes	Yes		1	\$101,750
Pantelis Kounis	Endera Motors, LLC*	Greater Shore	Yes				1	\$112,500
NAM Home Solutions	GreenPower Motor Company, Inc	Greater New Brunswick	Yes	Yes			1	\$97,750

Eraso Landscape And Construction LLC	GreenPower Motor Company, Inc	Greater New Brunswick	Yes	Yes			2	\$195,500
Carmona Home Installation Services	GreenPower Motor Company, Inc	Greater New Brunswick	Yes	Yes	Yes		1	\$101,750
NCP Painters LLC	GreenPower Motor Company, Inc	Greater Newark	Yes	Yes	Yes		2	\$203,500
Urban Agriculture Cooperative	GreenPower Motor Company, Inc	Greater Newark	Yes				1	\$93,750
Adapa LLC	Sea Electric	Greater Newark	Yes				3	\$318,750
OK Media Marketing	Envirotech Vehicles Inc	Greater New Brunswick	Yes				2	\$225,000
Sirajul Islam	Endera Motors, LLC*	Greater Shore	Yes	Yes			1	\$97,750
Tu Supite Fritura Dominicana Bakery	Envirotech Vehicles Inc	Greater Newark	Yes	Yes			1	\$97,750
Revive By Carolina Inc	Envirotech Vehicles Inc	Greater Newark	Yes	Yes	Yes		1	\$99,500
Kronos Logistic LLC	GreenPower Motor Company	Greater Newark	Yes	Yes	Yes		2	\$203,500
OK Media Marketing	Envirotech Vehicles Inc	Greater New Brunswick	Yes	Yes			1	\$97,750
La Oficina LLC	Envirotech Vehicles Inc	Greater Newark	Yes	Yes	Yes		1	\$99,500
Mundo Latino Pro service LLC	GreenPower Motor Company, Inc	Greater New Brunswick	Yes	Yes			1	\$97,750
Ordonez Property Management LLC	Envirotech Vehicles Inc	Greater New Brunswick	Yes	Yes			2	\$195,500

Cacao and Beyond L.L.P.	GreenPower Motor Company, Inc	Greater Newark	Yes	Yes	Yes		1	\$101,750
Revive By Carolina Inc	Envirotech Vehicles Inc	Greater New Brunswick	Yes	Yes	Yes		1	\$99,500
Diber Web Services LLC	Envirotech Vehicles Inc	Greater Newark	Yes	Yes			1	\$97,750
<b>Totals:</b>	<b>24 Applicants</b>						<b>30</b>	<b>\$3,010,000</b>

\*Vendor qualified for NJ Manufacturing bonus (additional 25% on top of base voucher)

Note: Adomani Inc changed its name to Envirotech Vehicles Inc.

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### **Commuter and Transit Bus Private Carrier Pandemic Relief and Jobs Program**

In July 2022, the Board approved the Commuter and Transit Bus Private Carrier Pandemic Relief and Jobs Program (“The Program”). The Program is a non-recurring grant program to help commuter and transit bus transportation companies alleviate the revenue loss resultant from the COVID-19 pandemic, allowing them to retain or create jobs. To provide financial relief to address the continued impact of COVID-19 on the economy, the Federal government passed the American Rescue Plan Act (ARP) of 2021. Within the ARP, the Coronavirus State and Local Fiscal Recovery Fund (SFRF) provided approximately \$6.2 billion in funds to the State of New Jersey for a variety of recovery-specific uses. The State’s Fiscal Year 2022 Appropriations Act allocated \$25,000,000 of these monies to The Commuter and Transit Bus Private Carrier Pandemic Relief and Jobs Program.

Grants are allocated to eligible applicants using a predefined formula, consisting of a flat award amount and a share of the remaining program funds proportional to the applicant’s total vehicle revenue miles, capped at unmet need. Each approved applicant is eligible for a flat grant amount of \$500,000. The flat grant amount is intended to equitably address base overhead costs that are independent of revenue miles operated, for example, the cost of vehicle maintenance, employee salaries, and garage depots for buses.

The remainder of the funds are allocated based on each eligible applicant’s proportional share of the total vehicle revenue miles in New Jersey for 2020 for all eligible applicants, as reported in the NTD directly or through NJ Transit as a private carrier. This methodology is being used to account for additional variable revenue losses and cost increases associated with volume of service maintained during the COVID-19 pandemic.

The maximum award, inclusive of the flat amount and pro-rata allocation, will not exceed the applicant’s unmet need. For this Program, as aligned with duplication of benefits requirements, unmet need is defined as 2020 New Jersey revenue losses (calculated as the difference between

each applicant company's 2020 revenues reported in New Jersey and 2019 revenues reported in New Jersey), less any other public or private COVID-19 relief funds that a company received for 2020.

The Board approved delegated authority for the CEO to accept \$25,625,000 in SFRF funds, executed the standard form of SFRF MOU with DCA, approve applicants and award amounts, decline applicants, and make final administrative decision on appeals.

### **Private Carrier Pandemic Relief and Jobs Program – Q4 2022 Review**

Applications opened March 8<sup>th</sup>, 2022, and closed March 29<sup>th</sup>, 2022. Once the application window closed, fourteen (14) applications were submitted. During the application review process, one (1) applicant withdrew and thirteen (13) were awarded funding. All applications were approved via delegated approvals by the CEO in Q4 2022 and disbursed.

<b>Account Name</b>	<b>Doing Business As</b>	<b>Address: City</b>	<b>Address: County</b>	<b>Amount</b>	<b>Approval Date</b>	<b>Closing Date</b>
Port Imperial Ferry Corp.	Port Imperial Ferry Corp.	Weehawken	Hudson County	\$ 835,986.10	11/10/2022	11/30/2022
Academy Lines, L.L.C.	Academy Lines, L.L.C.	Hoboken	Hudson County	\$ 5,118,750.71	11/11/2022	11/25/2022
Olympia Trails Bus Company, Inc	Newark Airport Express / Coach USA	Elizabeth City	Union County	\$ 855,612.54	11/10/2022	11/22/2022
Orange, Newark, Elizabeth Bus, Inc	ONE Bus / Coach USA	Elizabeth City	Union County	\$ 1,792,372.88	11/10/2022	11/25/2022
Rockland Coaches, Inc	Rockland Coaches / Coach USA	Paramus Borough	Bergen County	\$ 1,906,253.83	11/10/2022	11/28/2022
Suburban Transit Corporation	Suburban / Coach USA	New Brunswick	Middlesex County	\$ 2,251,106.46	11/10/2022	11/28/2022
Hudson Transit Lines, Inc	Shortline / Coach USA	Chester	Orange County	\$ 5,139,467.73	11/10/2022	11/25/2022
Trans-Bridge Inc	Trans-Bridge Lines Inc	Bethlehem	Northampton County	\$ 2,482,659.24	11/10/2022	11/22/2022
Community Transit Lines, Inc	Community / Coach USA	Paramus Borough	Bergen County	\$ 880,415.12	11/10/2022	11/22/2022

Lakeland Bus Lines Inc.	Lakeland Bus Lines Inc.	Dover	Morris County	\$ 1,358,149.97	11/11/2022	11/28/2022
De Camp Bus Lines	De Camp Bus Lines	Montclair	Essex County	\$ 1,118,379.23	11/11/2022	11/21/2022
A. C. M. CORP.	A&C Bus Corporation & Montgomery & Westside Owners Association, dba: A&C Bus Corporation	Jersey City	Hudson County	\$ 1,011,474.19	11/11/2022	11/19/2022
Broadway Bus Owners Corp	Broadway Bus Owners Corp	Bayonne	Hudson County	\$ 249,372.00	11/10/2022	11/17/2022
<b>Totals:</b>	<b>13 applicants</b>			<b>\$25,000,000</b>		

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### **New Jersey Film and Digital Media Tax Credit Program**

Originally 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 35% of qualified film production expenses, or 30% of qualified film production expenses incurred for services performed and tangible personal property purchased for at a sound stage or other 30-mile radius of the intersection of Eighth avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New York. Under the Digital Media Tax Credit Program, applicants are eligible for 30% of qualified digital media production expenses and 35% for qualified digital media production expenses purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.

On April 13, 2022, the Board approved the delegations of authority for the New Jersey Film and Digital Media Tax Credit Program. Film Tax Credit applications seeking \$10 million or less, and Digital Media Tax Credit applications seeking \$3 million or less in tax credits can be approved under the updated delegations of authority.

### **New Jersey Film and Digital Media Tax Credit Program Q4 2022 Results**

In the fourth quarter of 2022, there were 20 applications approved under delegated authority for a total of \$41,708,751.

	<b>Applicant Name</b>	<b>PROD #</b>	<b>Award Amount</b>	<b>Approval</b>
1	Becky 2 The Movie LLC	PROD-00303206	\$ 604,879	10/6/2022
2	Plan B New Jersey LLC	PROD-00305558	\$ 231,666	10/19/2022
3	Pink Opaque LLC	PROD-00304955	\$ 2,544,645	10/31/2022
4	Otsego Production Services Corp	PROD-00304951	\$ 918,309	11/4/2022
5	Zombie Wedding, LLC	PROD-00305691	\$ 810,111	11/9/2022
6	Big Indie Hondo, Inc.	PROD-00305591	\$ 681,469	11/14/2022
7	WBMTY Entertainment Inc	PROD-00304922	\$ 1,691,578	11/22/2022
8	Our Son Film, Inc	PROD-00304853	\$ 955,531	12/2/2022
9	Call Her King, LLC	PROD-00305546	\$ 1,202,298	12/6/2022
10	GHB Productions, Inc	PROD-00304837	\$ 3,787,250	12/8/2022
11	Hug Without Screaming, Inc	PROD-00305577	\$ 3,319,052	12/8/2022
12	GGGW2 LLC	PROD-00305771	\$ 458,404	12/21/2022
13	Navesink River Productions LLC	PROD-00306466	\$ 6,687,775	12/22/2022
14	Roaring Stonk Productions Inc	PROD-00306449	\$ 6,610,716	12/22/2022
15	X-Ville Productions, LLC	PROD-00301074	\$ 4,173,752	12/22/2022
16	Pink Chair Productions LLC	PROD-00305654	\$ 3,528,114	12/22/2022
17	So Fly Christmas Movie LLC	PROD-00306450	\$ 768,017	12/22/2022
18	Summer Man Inc.	PROD-00308565	\$ 1,117,946	12/27/2022
19	Eternal Buzz Inc	PROD-00306411	\$ 1,406,433	12/29/2022
20	Bury Me, LLC	PROD-00306341	\$ 210,809	12/29/2022
			<b>\$ 41,708,751</b>	



Tim Sullivan, CEO

**Angel Investor Tax Credit Prepared by:**  
Christopher Shyers

**NJ Ignite Prepared by:**  
Jerrel Burney

**NJ Accelerate Prepared by:**  
Monika Athwal

**New Jersey Zero-emission Incentive Program Prepared by:**  
Olivia Barone

**Commuter and Transit Bus Private Carrier Pandemic Relief and Jobs Program**

**Prepared by:**

Olivia Barone

**New Jersey Film and Digital Media Tax Credit Program Prepared by:**

Matthew Sestrich

**Memo Prepared by:**

Clark Smith