



MEMORANDUM

TO: Members of the Authority

FROM: Timothy Sullivan
Chief Executive Officer

DATE: April 14, 2021

SUBJECT: Agenda for Board Meeting of the Authority April 14, 2021

Notice of Public Meeting

Roll Call

Approval of Previous Month's Minutes

CEO's Report to the Board

COVID-19 Response

Authority Matters

Office of Economic Growth

Bond Projects

Loans/Grants/Guarantees

Incentives

Real Estate

Board Memoranda

Executive Session

Public Comment

Adjournment

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

March 10, 2021

MINUTES OF THE MEETING

The Meeting was held by teleconference call.

Members of the Authority present via conference call: Chairman Kevin Quinn; Commissioner Marlene Caride of the Department of Banking and Insurance; Commissioner Robert Asaro-Angelo of the Department of Labor and Workforce Development; Brian Wilton representing the Governor's Office; Jane Rosenblatt representing Commissioner Shawn LaTourette of the Department of Environmental Protection; Catherine Brennan representing State Treasurer Elizabeth Muoio of the Department of Treasury; Public Members: Charles Sarlo, Vice Chairman; Philip Alagia, Virginia Bauer, Fred Dumont, Aisha Glover, Robert Shimko, First Alternate Public Member; and Rosemari Hicks, Second Alternate Public Member.

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

Members of the Authority absent: Public Members Massiel Medina Ferrara, and Marcia Marley

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

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

MINUTES OF AUTHORITY MEETING

The next item of business was the approval of the February 10, 2021 meeting minutes. A motion was made to approve the minutes by Mr. Dumont, seconded by Mr. Wilton, and was approved by the 13 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.

LOANS/GRANTS/GUARANTEES

ITEM: Micro Lender Support Grant Program

REQUEST: To approval the creation of the Micro Business Lender Support Grant Program, a pilot program that will make grant funding available to support organizations that lend to New Jersey micro and small businesses.

MOTION TO APPROVE: Ms. Bauer **SECOND:** Ms. Glover **AYES: 13**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 1

PETROLEUM UNDERGROUND STORAGE TANK (PUST)

ITEM: UST Appeal

REQUEST: To uphold staff's determination denying the Applicant for a conditional hardship grant under the Fund.

MOTION TO APPROVE: Mr. Dumont **SECOND:** Commissioner Angelo **AYES: 11**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 2

Ms. Glover abstained from voting because there were many details to consider.

Ms. Hicks abstained from voting because there were many details to consider.

Mr. Alagia left the meeting at this time.

AUTHORITY MATTERS

ITEM: Extension of Memorandum of Understanding (MOU) for NJ Brownfields Assistance Center at NJIT

REQUEST: To extend the Memorandum of Understanding with the New Jersey Institute of Technology for the NJ Brownfields Assistance Center at NJIT, provide additional funding and grant delegated authority.

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

RESOLUTION ATTACHED AND MARKED EXHIBIT: 3

ECONOMIC GROWTH

ITEM: New Jersey Wind Port – Request for Increase to Moffatt & Nichol Contract Value to Accommodate Electricity Substation and Distribution System Design

REQUEST: To approve a not-to-exceed funding amount for the engineering of an electricity substation and distribution system at the New Jersey Wind Port.

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

RESOLUTION ATTACHED AND MARKED EXHIBIT: 4

Ms. Rosenblatt abstained from voting because there are permits pending review before the DEP.

COVID-19 RESPONSE

ITEM: Community Development Finance Institution (CDFI) Emergency Loan Loss Reserve Fund – Program Extension

REQUEST: To approve an extension to the CDFI Emergency Loan Loss Reserve Fund to allow for CDFIs to register closed loans with the NJEDA for 24 months following Governor Murphy’s declared state of emergency.

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

RESOLUTION ATTACHED AND MARKED EXHIBIT: 5

INCENTIVES

ECONOMIC REDEVELOPMENT AND GROWTH (ERG) GRANT PROGRAM

ITEM: Camden Hotel Partners (CHP) (Commercial ERG) – Re-designation of Applicant Entity

REQUEST: To re-designate the applicant name from Camden Hotel Partners, LLC to the property owner, and redeveloper of the project, CHP Land, LLC (“Land”).

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

RESOLUTION ATTACHED AND MARKED EXHIBIT: 6

FILM & DIGITAL MEDIA TAX CREDIT PROGRAM

ITEM: Black Friday the Film Inc PROD. #00206965

MAX AMOUNT OF TAX CREDITS: \$922,633.80

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

RESOLUTION ATTACHED AND MARKED EXHIBIT: 7

ITEM: Shackled Film, LLC PROD. #00191008

MAX AMOUNT OF TAX CREDITS: \$102,921.60

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

RESOLUTION ATTACHED AND MARKED EXHIBIT: 8

ITEM: Whoiskurt LLC PROD. #00188360

MAX AMOUNT OF TAX CREDITS: \$297,048.60

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

RESOLUTION ATTACHED AND MARKED EXHIBIT: 9

REAL ESTATE

ITEM: FMERA Purchase and Sale & Redevelopment Agreement with New Jersey American Water for the Water Tank Parcel in Eatontown

REQUEST: To consent FMERA to enter into the redevelopment agreement contained within the Purchase and Sale Agreement & Redevelopment Agreement with New Jersey American Water for the sale and redevelopment of the Water Tank Parcel in the Fort's Eatontown Reuse Area.

MOTION TO APPROVE: Commissioner Caride **SECOND:** Ms. Brennan **AYES: 12**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 10

ITEM: FMERA Purchase and Sale & Redevelopment Agreement with the Borough of Eatontown for a Parks & Recreation Complex on the Nicodemus Park Parcel in Eatontown

REQUEST: To consent to FMERA to entering into the redevelopment agreement contained within the Purchase and Sale Agreement & Redevelopment Agreement with the Borough of Eatontown for the sale and redevelopment of the Nicodemus Park Parcel in the Fort's Eatontown Reuse Area.

MOTION TO APPROVE: Commissioner Caride **SECOND:** Ms. Rosenblatt **AYES: 12**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 11

ITEM: Parking Management Agreement with New Jersey Aquarium for the Camden Waterfront

REQUEST: To consent to the execution of a Parking Management Agreement between the New Jersey Aquarium, LLC and the Authority.

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

ITEM: New Jersey Bioscience Center Eighth Amendment to the Payment in-Lieu of Taxes Agreement and Other Matters with North Brunswick Township

REQUEST: To approve the Eighth Amendment to the PILOT Agreement with the Township as described above and the attached Exhibits, and to make all other changes necessary to carry out this transaction on terms acceptable to the Chief Executive Officer and the Attorney General's Office.

MOTION TO APPROVE: Ms. Brennan **SECOND:** Ms. Bauer **AYES: 12**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 13

BOARD MEMORANDA:

CREDIT UNDERWRITING

FYI ONLY: Credit Underwriting Delegated Authority Approvals – February 2021

Premier Lender Program:

PROJECT: Millville Properties, LLC (PROD-00257826)

LOCATION: Millville City, Cumberland County

PROCEEDS FOR: Working Capital

FINANCING: \$1,260,000 Loan

PROJECT: St. Rita's Estate LLC (PROD-00257817)
LOCATION: South Plainfield Borough, Middlesex County
PROCEEDS FOR: Working Capital
FINANCING: \$4,896,000 Loan

Micro Business Loan Program:

PROJECT: Animal Bikes, Inc. (PROD-00224471 & 00258182)
LOCATION: Jersey City, Hudson County
PROCEEDS FOR: Working Capital
FINANCING: \$22,500 /\$2,500 working/forgivable capital loan

PROJECT: BelO Cryotherapy LLC (PROD-00224545 & 258196)
LOCATION: Livingston Township, Essex County
P ROCEEDS FOR: Working Capital
FINANCING: \$17,100 \$1,900 working/ forgivable capital loan.

PROJECT: Bijou Amore Inc. ("Bijou") (PROD-00224559 & 00258160)
LOCATION: Englewood Cliffs Borough, Bergen County
PROCEEDS FOR: Working Capital
FINANCING: \$22,500/ \$2,500 working/ forgivable capital loan

PROJECT: Brigid Callahan Harrison Limited Liability Company (PROD-00224422 & 00258161)
LOCATION: Longport City, Atlantic County
PROCEEDS FOR: Working Capital
FINANCING: \$22,500/ \$2,500 working/forgivable capital loan

PROJECT: Chatham School House LLC (PROD-00224529 & 00258197)
LOCATION: Chatham Township, Morris County
PROCEEDS FOR: Working Capital
FINANCING: \$22,500/ \$2,500 working/ forgivable capital loan

PROJECT: Down Town Nails & Spa LLC (PROD-00224340 & 00258082)
LOCATION: Clayton Borough, Gloucester County
PROCEEDS FOR: Working Capital
FINANCING: \$45,000/ \$5,000 working/ forgivable capital loan

PROJECT: Friday Films LLC (PROD-00224256 & 00258094)
LOCATION: Edison Township, Middlesex County
PROCEEDS FOR: Working Capital
FINANCING: \$18,000/\$2,000 working/forgivable capital loan

PROJECT: Global Producers Services, Inc. (“GPS”) (PROD-00224232 & 00258102)

LOCATION: Plumsted Township, Ocean County

PROCEEDS FOR: Working Capital

FINANCING: \$22,500/ \$2,500 working/forgivable capital loan

PROJECT: Hands to Feet Therapy LLC DBA Whole Team Therapy (PROD-00224449 & 00258192)

LOCATION: Lakewood Township, Ocean County

PROCEEDS FOR: Working Capital

FINANCING: \$45,000/ \$5,000 working/forgivable capital loan

PROJECT: Inspire Investments LLC DBA Heavenly Chicken and Ribs (PROD-00224561 & 00258176)

LOCATION: Jersey City, Hudson County

PROCEEDS FOR: Working Capital

FINANCING: \$22,500/\$2,500 working/forgivable capital loan

PROJECT: JTS (New Jersey) Inc. (PROD-00224564 & 00258167)

LOCATION: Hackensack City, Bergen County

PROCEEDS FOR: Working Capital

FINANCING: \$22,500/\$2,500 working/forgivable capital loan

PROJECT: Legacy Coffee LLC (PROD-00224520 & 00258081)

LOCATION: Montclair Township, Essex County

PROCEEDS FOR: Working Capital

FINANCING: \$22,500/ \$2,250 working/forgivable capital loan

PROJECT: Micro Enterprises LLC DBA Uniq Electronics (“Uniq”) (PROD-00224436 & 00258098)

LOCATION: Pennsville Township, Salem County

PROCEEDS FOR: Working Capital

FINANCING: \$45,000/\$5,000 working/forgivable capital loan

PROJECT: Mill Hill Saloon, LLC (PROD-00224479 & 00258195)

LOCATION: Trenton City, Mercer County

PROCEEDS FOR: Working Capital

FINANCING: \$45,000/\$5,000 working/forgivable capital loan

PROJECT: MST Tutoring, LLC (PROD-00224229 & 00258199)

LOCATION: Manasquan Borough, Monmouth County

PROCEEDS FOR: Working Capital

FINANCING: \$22,500/ \$2,500 working/forgivable capital loan

PROJECT: Neaha Sub, Inc. DBA Subway (PROD-00224261 & 00258056)

LOCATION: Parsippany-Troy Hills Township, Morris County

PROCEEDS FOR: Working Capital

FINANCING: \$45,000/ \$5,000 working/forgivable capital loan

PROJECT: Neaha Sub 2 LLC DBA Subway (PROD-00224254 & 00258059)

LOCATION: Jersey City, Hudson County

PROCEEDS FOR: Working Capital

FINANCING: \$45,000/ \$5,000 working/forgivable capital loan

PROJECT: Neaha Sub and Salad LLC DBA Subway (PROD-00224274 & 00258057)

LOCATION: Wayne Township, Passaic County

PROCEEDS FOR: Working Capital

FINANCING: \$45,000/\$5,000 working/forgivable capital loan

PROJECT: Sung Hee Lee (PROD-00224503 & 00258090)

LOCATION: Harrison Township, Gloucester County

PROCEEDS FOR: Working Capital

FINANCING: \$45,000/\$5,000 working/forgivable capital loan

PROJECT: TCH at Culver Lake LLC (PROD-00224389 & 002258151)

LOCATION: Branchville Borough, Sussex County

PROCEEDS FOR: Working Capital

FINANCING: \$22,500/\$2,500 working/forgivable capital loan

PROJECT: The Center for Sports Medicine, LLC DBA Masri Sports Medicine & Wellness (PROD-00224316 & 00258200)

LOCATION: Clifton City, Passaic County

PROCEEDS FOR: Working Capital

FINANCING: \$45,000/ \$5,000 working/forgivable capital loan

FYI ONLY: New Jersey Small and Micro Business PPE Access program – Designated Vendor Delegated Authority Approvals and Phase 2 Program Usage Updates

PUBLIC COMMENT

There was no public comment.

There being no further business, on a motion by Mr. Quinn, and seconded by Commissioner Caride, the meeting was adjourned at 11:29am.

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: April 14, 2021

Re: April 2021 Board Meeting

It has been another exciting month at the New Jersey Economic Development Authority (NJEDA) as we checked off milestones advancing several key objectives of Governor Phil Murphy's plan for a stronger, fairer New Jersey economy. Supporting businesses impacted by the COVID-19 pandemic remains a top priority, as evidenced by Governor Phil Murphy's signing a series of bills committing support totaling \$100 million in Coronavirus Aid, Relief, and Economic Security (CARES) Act funds in support of small businesses in sectors most impacted by the pandemic. Child care providers, restaurants, micro businesses (five or fewer employees), and other small businesses (26-50 employees), are the focus of the NJEDA's plan for Phase 4 of the Small Business Emergency Assistance Grant Program, and we are working closely with the New Jersey State Council on the Arts to identify the most effective way to provide financial support to the state's arts organizations, which have been operating in a limited capacity since the start of the pandemic. We expect to launch programs in support of all sectors in the coming weeks.

We have also made strides recently in the area of clean energy, including a major announcement from Washington, D.C. on March 29th that the federal Bureau of Ocean Energy Management issued a Notice of Intent (NOI) to advance Ocean Wind, Ørsted's 1,100 MW offshore wind project 15 miles off the coast of New Jersey. It is estimated that Ocean Wind could generate \$1.17 billion in economic benefits for New Jersey and create thousands of good-paying union jobs over the life of the project. Ocean Wind can now continue through the environmental review stage of the regulatory approval process which is required under the National Environmental Policy Act.

In another move toward reducing the state's carbon footprint, on April 6th, we launched the application for NJ ZIP, a \$15 million pilot program that will fund 100 to 300 vouchers ranging in value from \$25,000 to \$100,000 for businesses and institutional organizations in the greater Newark and Camden areas for the purchase of new, zero emission medium and heavy-duty vehicles (MHDVs). NJ ZIP is the first initiative in New Jersey's holistic, Regional Greenhouse Gas Initiative (RGGI)-funded effort to support the deployment of zero emission MHDVs. Initially, NJ ZIP will only be available in the greater Newark and greater Camden areas, defined as the overburdened communities within a 10-mile radius centered on Newark and Camden. More information is available at <https://www.njeda.com/njzip>.

The Commission on Science, Innovation and Technology (CSIT) also took steps toward protecting the environment when it launched an application on April 5th for its Clean Tech Research and Development (R&D) Voucher Program. The \$435,000 program is designed to help early-stage New Jersey clean technology companies more easily access resources such as specialized equipment within the Garden State. CSIT developed the program in coordination with the New Jersey Board of Public Utilities (NJBPU) and the NJEDA. Through the Clean Tech R&D Voucher Program, eligible applicants will receive vouchers to subsidize the costs associated with services or activities in a participating New Jersey university or federal laboratory facility. Each eligible applicant can apply for multiple vouchers up to a cap of \$15,000 within any 12-month period. Specifically, the program will fund work on projects that are developing or testing clean technologies intended to recapture or avoid emissions of greenhouse gases and/or criteria pollutants, or to enable such avoidance or recapture.



Programs created under the Economic Recovery Act of 2020 are also beginning to advance. The Emerge program, the successor to Grow NJ, has been the subject of a series of three public listening sessions being held to allow members of the public to provide feedback on draft rules for the program. The last of those sessions will take place later today. The sessions are being recorded and are available on our website, along with a form through which stakeholders can provide written comments on the draft rules. Emerge will drive job creation by making per-job tax credits available to projects that create good-paying jobs in the State's priority sectors. The Emerge program is expected to begin accepting applications in late May.

While the COVID-19 outbreak continues to create health and economic hurdles, the increased availability of vaccines, the improving weather, and new resources that will impact the economy well beyond the pandemic are among many reasons to be hopeful. We would certainly not have made it this far in our fight to overcome the challenges of the pandemic without our many supportive partners across state and local government, throughout the business community, and right here on our Board. We appreciate your partnership now, more than ever.

A handwritten signature in dark ink, appearing to be "T. A.", is written above a solid horizontal line that spans the width of the signature area.

COVID-19 PROGRAM



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: April 14, 2021

RE: Use of Coronavirus Relief Fund appropriation and Creation of Small Business Emergency Assistance Grant Program - Phase 4

Summary

The Members are asked to approve:

1. Approval of a Fifth Amendment to the Memorandum of Understanding (MOU) with the New Jersey Department of the Treasury (NJ Treasury) whereby the NJEDA will accept \$85 million in funds from the Coronavirus Relief Fund including administrative costs of up to \$4,000,000 and agree to comply with federal requirements for the use of those funds, and delegation to the Chief Executive Officer to accept up to \$200 million in total, if additional funds become available;
2. The creation of a fourth phase of the Small Business Emergency Assistance Grant Program to make grant funding available for short-term operating support to a broad group of New Jersey small and medium sized businesses and non-profits (collectively "SMEs" or "businesses") that have been negatively impacted during the declared state of emergency. This program would be available to support businesses impacted by the novel coronavirus ("COVID-19") emergency, utilizing funds received by the Authority from the Coronavirus Relief Fund, consistent with the federal requirements associated therewith;
3. Approval to issue one or more purchase orders to 22nd Century Technologies Inc. to hire temporary employees to administer any phase of the grant program, or other COVID-19 programs as needed, up to a maximum aggregate cost of \$923,000;
4. Delegation to Authority staff (Chief Executive Officer, Chief Operations and Compliance Officer, Chief Legal and Strategic Affairs Officer) to accept other governmental (Federal, State or County) funding and/or unrestricted gifts or grants, or dedicate previously received unrestricted gifts or grants, to fund Phase 4 of the Small Business Emergency Assistance Grant Program;

5. Delegation to Authority staff (Chief Executive Officer, Chief Operations and Compliance Officer, Chief Legal and Strategic Affairs Officer) to impose additional requirements as may be required by law as a condition of accepting governmental (Federal, State or County) funding, provided that the requirements are consistent with the parameters of the program;
6. Delegation to Authority staff (Chief Operations and Compliance Officer, Senior Vice President, Director – Recovery Front-End Operations, Director of Portfolio Relations) to approve individual applications to the Small Business Emergency Assistance Grant Program (Phase 4) in accordance with the terms set forth in this memo and the attached program specifications, and because the specifications are streamlined and will result in non-discretionary decisions, the delegated authority requested includes the authority to decline applications and, in the event of appeals from those declinations, issue final administrative decisions, which must be approved by the Chief Legal and Strategic Affairs Officer, a Senior Vice President, Vice President, Managing Director, Director or Program Manager; and
7. Delegation to the Chief Executive Officer to (a) extend the deadline for disbursement and use of funds if the N.J. Treasury and/or CRF deadlines are extended, (b) reallocate funds from or to other CRF-funded programs, and/or (c) return to N.J. Treasury any amounts remaining after all applications have been processed and all eligible applications have been funded, or as otherwise required by law or the MOU with Treasury.

Background

On March 9, 2020, Governor Phil Murphy issued Executive Order 103, declaring a State of Emergency and a Public Health Emergency to ramp up New Jersey's efforts to contain the spread of COVID-19. Governor Murphy has continued to extend the Public Health Emergency since that date. Subsequent containment measures were implemented, including restrictions on public gatherings and mandated closure of non-essential businesses. While these measures are consistent with similar measures being taken nationally that are expected to limit the public's exposure to COVID-19, there has been and will continue to be a significant adverse impact on our state's economy.

On March 26, 2020, the Board approved the creation of the Small Business Emergency Assistance Grant Program – an emergency grant funding program to provide funding as efficiently and quickly as possible to SMEs that needed payroll and working capital support as a result of adverse economic impacts following the March 9, 2020 declaration of a State of Emergency and a Public Health Emergency. The initial phase of the grant program focused on the smallest enterprises in targeted industries that were among the most adversely impacted by the containment measures.

The Members approved the use of \$5 million from NJEDA funds for the original Small Business Emergency Assistance Grant Program. The Casino Reinvestment Development Authority (CRDA) provided additional funds to support impacted entities in Atlantic County. The Authority launched the application for the original Small Business Emergency Assistance Grant Program on April 6, 2020, and the response was overwhelming. Within the first hour of the application being available, more than 10,000 businesses had submitted applications. By the time the application

closed a week later, the Authority received 34,404 applications, representing an estimated \$117 million in total grant funding requested.

On May 22, 2020, the Board approved Phase 2 of the Small Business Emergency Assistance Grant Program, accepting \$51 million from the Coronavirus Relief Fund (the “Fund”), as established under the Federal Coronavirus Aid, Relief, and Economic Security (CARES) Act, to both provide additional funding to Phase 1 and to capitalize Phase 2. The second phase of the grant program expanded its focus to include businesses of up to 25 full-time equivalent employee (FTE), and removed industry-related restrictions to eligibility, in acknowledgement of the reality that nearly all SMEs in a wide range of industries have been adversely affected by the economic consequences of the public health emergency and were in urgent need of assistance.

On October 14, 2020, the Board approved Phase 3 of the Small Business Emergency Assistance Grant Program, accepting an additional \$70 million from the Fund for grant funding plus \$3.5 million to cover administrative costs. Phase 3 expanded eligibility for the Grant Program to small and medium sized businesses and non-profits with up to 50 full-time equivalent employees and increases the amount of funding businesses can receive. Phase 3 reserved funding for the most adversely affected businesses: restaurants, micro-businesses, and businesses based in Opportunity Zone-eligible census tracts. The Authority originally received \$73.5 million in CRF funding for Phase 3. The Authority subsequently received an additional \$50.5 million. Plus, an additional \$25.5 million in funds were reallocated from other programs.

As of March 23, 2021, the Authority had approved nearly 44,000 grant applications, broken down as follows:

- In Phase 1, 3,386 applications representing close to \$11 million in total grant funding;
- In Phase 2, 19,946 applications representing nearly \$57 million in total grant funding;
- In Phase 3, 20,485 applications representing almost \$146 million in total grant funding awarded.

Coronavirus Relief Fund

As the Governor announced, [and as provided in recently enacted legislation,] Treasury shall make available an additional \$85 million from the Coronavirus Relief Fund to administer as grant funding, and up to \$4,000,000 of that funding will be used for future administrative costs of the grant programs. The U.S. Department of the Treasury released Guidance on the use of the Fund on April 22, 2020 and subsequently issued frequently asked questions (FAQs), both of which U.S. Treasury most recently updated on January 11, 2021 (*see* FR Doc. 2021-00827). Additionally, the U.S. Treasury Office of Inspector General has released information pertaining to CRF reporting and record keeping. The Guidance and FAQs specifically state that costs incurred between March 1 and December 30, 2021, related to grants to small businesses for costs of business interruption caused by required closures are eligible.

The Members are requested to approve an MOU Amendment with NJ Treasury for the utilization of \$85 million in CRF funding to establish a fourth phase of the Small Business Emergency Assistance Grant Program. As the Members may recall, the intent of the initial phase of the Small

Business Emergency Assistance Grant Program was to structure the program in a way that the limited amount of funding could be used to support some of the smallest and directly impacted businesses and organizations, as quickly as possible. This resulted in strict programs requirements established under Phase 1 to meet this intent, which caused a large segment of the small business and non-profit community to be ineligible for grants under Phase 1 of the program.

With the benefit of additional funding being available under Phase 2, the Authority expanded eligibility to businesses of any industry with up to 25 FTEs. While Phase 2 proved to be very successful in supporting thousands of businesses, approximately 40% of the reviewed portfolio was declined due to ineligibility, and the economic effects of the public health emergency have only deepened. Staff used this experience in administering Phases 1 and 2 of the Small Business Emergency Assistance Grant Program to help inform the eligibility requirements for Phase 3. For example, in recognition of the overwhelming financial need of SMEs – including those with greater than 25 employees – eligibility was expanded even further in Phase 3, while still dedicating a large portion of funds to micro-businesses with 5 or fewer FTEs. And as the ongoing safeguards on public activity continued to have an outsized effect on the restaurant industry, funding was set aside for restaurants with up to 50 FTEs.

Given the Authority's experiences across all three phases of the grant program, staff is recommending for Phase 4 utilizing a similar approach to Phase 3 with dedicated funding to micro and small businesses and with continued set asides for the restaurant industry and the addition of child care providers.

As part of the proposed MOU with Treasury, staff is seeking approval to fund administrative costs associated with administering any phase of the grant program, or other COVID-19 program as needed. The proposed MOU would allocate up to 5% of total grant funds to administration costs. Given the amount of available funding under a proposed Phase 4 program, the volume of entities the Authority anticipates will apply, and the urgency in which the funding is needed by these entities, the Authority does not have sufficient staff to administer Phase 4 (or other phases) of the program. Accordingly, staff seek approval to issue one or more purchase orders to 22nd Century Technologies Inc. ("22nd Century") to hire temporary employees to scale up operations and administer any phase of the grant program, or other COVID-19 program as needed, up to a maximum aggregate cost of \$923,000. This is in addition to a purchase order issued under delegated authority for \$241,706.40 for a total of 31 temporary employees. These two purchase orders are expected to result in the addition of up to 50 temporary employees. The Authority is able to contract directly with 22nd Century because 22nd Century has a State contract procured by the Division of Purchase and Property (within the Department of the Treasury). In accordance with the applicable statute (N.J.S.A. 52:34-6.2) and the New Jersey Administrative Code (N.J.A.C. 17:12-1A.3), the State awarded a Blanket P.O. to 22nd Century based on a National Cooperative Agreement procured and awarded by NASPO ValuePoint, the cooperative contracting arm of the National Association of State Procurement Officials (NASPO), for the provision of Temporary Employment Services. Information regarding the NASPO Master Agreement for the provision of Temporary Employment Services (Temporary Employment Services 50-000-15-00058 AA) may be found on the NASPO website at: <http://naspovaluepoint.org/#/contract-details/83/overview/general>. That contract offers the Authority the ability to hire temporary employees expeditiously, on acceptable terms and for the

best value. These expenditures are related to the administration of the small business Grant Program which reimburses eligible costs for COVID-19 related recovery and reopening efforts. These positions will be publicized across numerous employment sites, using social media and through a variety of entities including the African American Chamber of Commerce of NJ, the Statewide Hispanic Chamber of Commerce of NJ, and the NJ Veterans Chamber of Commerce.

The above uses will be memorialized in an Amendment to the Authority's MOU with the NJ Department of the Treasury. The MOU will also require NJEDA to follow the federal requirements applicable to the funds and will enable NJ Treasury to claw back any funds the use of which are inconsistent with those federal requirements. The MOU will require the NJEDA to disburse the funds and expend all administrative funds by September 30, 2021. To ensure compliance with the CARES Act and U.S. Department of the Treasury requirements, all Grant Funds must be expended by grantees no later than December 31, 2021.

Program Details of Phase 4

The following parameters below, and further described in the attached program specifications, detail the Authority's recommended approach to structuring the fourth phase of the Small Business Emergency Assistance Grant Program.

Eligibility

Under the initial phase of the program, eligibility was restricted to businesses of no more than 10 FTEs that were operating under a very narrow set of industries as determined by the North American Industry Classification (NAICS) code, and that were not home-based businesses or sole proprietors. In Phase 2, the employee eligibility cap was increased to no more than 25 FTEs, with no restrictions by NAICS code with the exception of certain prohibited businesses, and with eligibility extended to home-based businesses and sole proprietors. Phase 3 of the program expanded eligibility to businesses with no more than 50 FTEs and maintained the same Phase 2 eligibility with regards to NAICS code, home-based businesses and sole proprietors.

In Phase 4, staff recommends eligibility as follows:

- The employee eligibility cap will be 50 FTEs for all industries; and
- All businesses registered in New Jersey and meeting the above eligibility cap will be eligible, including home-based businesses and sole proprietors, with the exception of certain prohibited businesses as documented in the attached Phase 4 program specifications sheet.

Businesses that were approved for grant funding under Phases 1-3 of the Small Business Emergency Assistance Grant Program will be eligible for Phase 4 funding. Funding received in Phases 1, 2 or 3 will not affect the award sizes these businesses are eligible to receive in Phase 4 (except to the extent those prior awards reduce the business's unmet need to below the grant amount the business would otherwise be eligible for). However, businesses that applied in Phases 1-3 will need to re-apply and submit all required documentation regardless of their prior application. The Phase 4 application will open 2 days earlier for businesses, in any category, that were not approved for Phase 3 funding.

Award Size

Phase 1 and Phase 2 of the Small Business Emergency Assistance Grant Program utilized a similar methodology for calculating a grant award, with \$1,000 available per FTE, as reported in the most recent 2019 WR-30. However, Phase 2 offered a larger potential maximum award amount: while the maximum grant amount per business/organization for Phase 1 was \$5,000, the maximum grant award size was increased to \$10,000 for Phase 2. Applicants that were approved for funding under Phase 1 that had 5 FTEs or fewer were not eligible for Phase 2 funding, as they had already received their maximum funding amount of up to \$5,000.

In Phase 3, to enable the administrative efficiency needed to execute the program in a timely manner, award sizes were based on a fixed award amount based on FTE bands and industry categories rather than calculated on a per FTE basis.

Under the recommended approach for Phase 4, FTE bands and corresponding fixed award amounts are as follows; however, the award may not exceed the applicant's unmet need:

Award sizes for all categories including “Food Services and Drinking Places” businesses with NAICS beginning with 722 and “Child Care Providers” businesses with NAICS code 624410, Micro-Businesses and Small Businesses

FTE band	Award size
5 FTEs or fewer, including businesses with no FTEs	\$10,000
6-25 FTEs	\$15,000
26-50 FTEs	\$20,000

FTE Determination

In Phase 1 and Phase 2 of the Small Business Emergency Assistance Grant Program, verification of FTEs for both eligibility and award size purposes was based on the FTEs reported on the company's most recently filed WR-30 with the New Jersey Department of Labor and Workforce Development (DOL). In Phase 3 staff continued verification with DOL data, but the FTE for purposes of eligibility and award size was based on the FTE count reported the prior six quarters of WR-30 filings. Initially, the highest FTE count of the prior six quarters was used, enabling businesses to receive the award corresponding to their peak headcount in 2019 or 2020 rather than their current headcount, which may have reflected substantial headcount declines due to significant losses in revenue during the COVID-19 pandemic. However, if the peak FTE would make a business ineligible, the most recent WR-30 filing was reviewed. If the most recent WR-30 FTE count was less than the eligibility threshold, the business was eligible and received a grant award based on the largest FTE band relevant to the business.

In Phase 4, staff recommends continuing the approach used in Phase 3, using DOL data but extending the award size period to include the past eight quarters of WR-30 filings. Initially, the

highest FTE count of the past eight quarters—1st Quarter 2019 – 4th Quarter 2020— will be used, enabling businesses to receive an award corresponding to their peak headcount in 2019 or 2020 rather than their current headcount, which may reflect substantial headcount declines due to significant losses in revenue during the COVID-19 pandemic. To determine eligibility, the 4th Quarter 2020 WR-30 or 3rd Quarter 2020 WR-30, whichever is the most recently filed, will be reviewed. If the most recent WR-30 FTE count is less than the eligibility threshold, the business will be eligible and receive a grant award based on the largest FTE band.

As in Phases 1-3, because WR-30 filings are based on Employer Identification Numbers (EINs), entities with more than one EIN will be able to submit one application per EIN. That is, NJEDA will consider any entity with its own EIN as a distinct applicant. Businesses that may have multiple locations but only one EIN can only apply once under the sole EIN and are therefore subject to a single award amount applicable to their business size and industry as shown in the table above. Implied FTE calculations will be rounded to the nearest FTE (e.g., 2.24 FTE would be counted as 2 FTE for the program, whereas 2.50 or 2.75 FTE would be counted as 3 FTE). While the calculation of FTEs is based on weeks worked and wages as reported on the WR-30 filing, sole proprietorships or entities with no FTEs, may receive a grant amount of up to \$10,000 as outlined in the five or less FTE band.

Funding categories

As outlined in the recently enacted legislation, the \$85M in Coronavirus Relief Fund funding available to support Phase 4 will be allocated as follows. Each applicant is only eligible for one allocation of funding. Any additional funding received by EDA beyond this \$85M would be available to any eligible Phase 4 applicant, regardless of which allocation they fall into (restaurant, child care providers, micro-business or other small businesses):

- **Restaurants:** \$35 million of funding will be reserved to support restaurants (as defined in the program specifications). Thirty-three percent (33%) of the funding within this category will be directed to support entities that have a commercial business address (or home address for home-based businesses) located (fully or partially) in a census tract that was eligible to be selected as a New Jersey Opportunity Zone (i.e., a New Market Tax Credit census tract). Because this is a reserve to be used for the applications received, any amount of the 33 percent Opportunity Zone eligible reserve that remains after processing all applications from entities in Opportunity Zone eligible census tracts would be used for any other eligible applicant to this \$35 million restaurant funding pool. Similarly, any amount of this \$35 million pool that remains after processing all applications would be used for any other eligible Phase 4 applicant.
- **Child Care Providers:** \$10 million of funding will be reserved to support child care businesses (as defined in the program specifications). Thirty-three percent (33%) of the funding within this category will be directed to support entities that have a commercial business address (or home address for home-based businesses) located (fully or partially) in a census tract that was eligible to be selected as a New Jersey Opportunity Zone (i.e., a New Market Tax Credit census tract). Because this is a reserve to be used for the applications received, any amount of the 33 percent Opportunity Zone eligible reserve that remains after processing all applications from entities in Opportunity Zone eligible census tracts would be used for any other applicant to this \$10 million child care providers funding

pool. Similarly, any amount of this \$10 million pool that remains after processing all applications would be used for any other eligible Phase 4 applicant.

- **Micro-businesses:** \$25 million of funding will be reserved to support businesses that have had 5 or fewer FTEs in each of the eight quarters—1st Quarter 2019 – 4th Quarter 2020—of WR-30 filings (including businesses with no FTEs), given the unique financial vulnerability experienced because of COVID-19 by micro-businesses, which typically have lower financial reserves. Thirty-three percent (33%) of the funding within this category will be directed to support entities that have a commercial business address (or home address for home-based businesses) located (fully or partially) in a census tract that was eligible to be selected as a New Jersey Opportunity Zone (i.e., a New Market Tax Credit census tract). Because this is a reserve to be used for the applications received, any amount of the 33 percent Opportunity Zone eligible reserve that remains after processing all applications from entities in Opportunity Zone eligible census tracts would be used for any other eligible applicant to the \$25 million micro-business funding pool. Similarly, any amount of this \$25 million pool that remains after processing all applications from micro-businesses would be used for any other eligible Phase 4 applicant.
- **Other small businesses:** \$15 million of funding will be reserved to support businesses that are not eligible for the restaurant, child care provider or micro-business category. Thirty-three percent (33%) of the funding within this category will be directed to support entities that have a commercial business address (or home address for home-based businesses) located (fully or partially) in a census tract that was eligible to be selected as a New Jersey Opportunity Zone (i.e., a New Market Tax Credit census tract). Because this is a reserve to be used for the applications received, any amount of the 33 percent Opportunity Zone eligible reserve that remains after processing all applications from entities in Opportunity Zone eligible census tracts would be used for any other eligible applicant to this \$15 million funding pool. Similarly, any amount of this \$15 million pool that remains after processing all applications would be used for any other eligible Phase 4 applicant.

There are 715 census tracts that were eligible to be Opportunity Zones in New Jersey. These areas were among the ones most significantly affected by the COVID-19 pandemic and the concomitant adverse impact on small businesses and our State's economy. As was done in Phases 2-3, setting aside a portion of available funding under Phase 4 of the Small Business Emergency Assistance Grant Program to support entities in these census tracts further reinforces the State's commitment to helping to ensure all Opportunity Zone eligible tracts in New Jersey receive opportunities for investment that are equitable and inclusive.

Eligibility verification process

Consistent with Phases 1-3 of the program, staff is recommending that in addition to the eligibility parameters already stated above, the applicant must satisfy Taxation's requirement to ensure that the SME does not have tax debts due to the State and must certify that it does not owe any taxes, subject to repayment if the certification is not correct. The applicant will complete a simplified debarment legal questionnaire, and disqualification issues will be reviewed under existing delegated authority, including the delegated authority approved by the Board on October 14, 2020. To be eligible for the grant funding, the applicant must also be in good standing with the New Jersey Department of Labor and Workforce Development (LWD), the New Jersey Department of

Human Services (DHS) (if the applicant is regulated by DHS), the Department of Children and Families (DCF) (if the applicant is regulated by DCF), and the New Jersey Division of Alcoholic Beverage Control (ABC) (if the applicant is regulated by the ABC) at the time of application, as determined in the sole discretion of LWD, DHS, DCF and ABC.

As part of the grant application, the SME's chief executive officer or equivalent officer must self-certify that the SME:

- Was in operation on February 15, 2020 (consistent with the federal Paycheck Protection Program);
- Will make a best effort not to furlough or lay off any individuals from the time of application through six months after the end of the declared state of emergency. SMEs that have already furloughed or laid off workers from the time of application must make a best-effort pledge to re-hire those workers as soon as possible. Any material breach of its best efforts certification may result in the NJEDA seeking repayment of the grant;
- Has been negatively impacted by the COVID-19 declared state of emergency (e.g., has been temporarily shut down, has been required to reduce hours, has had at least a 20% drop in revenue, has been materially impacted by employees who cannot work due to the outbreak, or has a supply chain that has materially been disrupted and therefore slowed firm-level production); and
- Has a material financial need that cannot be overcome without the grant of emergency relief funds at this time (e.g., does not have significant cash reserves that can support the SME during this period of economic disruption).

Staff will take certain additional steps to ensure compliance with federal requirements. To comply with the CARES Act, including ensuring an unmet need for the funds arising from business interruption, applicants must acknowledge and agree that the funds must be used to replace revenue lost as a result of a business interruption caused by COVID-19 between March 1, 2020, and the date of the grant agreement. If the grant amount for the applicant is greater than the unmet need, the amount will be determined in \$500 increments, not to exceed the amount of need. Applicants with an unmet need between \$500 and \$1,000 the minimum Grant award shall be \$1,000, no grant amount will be approved if the unmet need is less than \$500.

To comply with duplication of benefits provisions within the Stafford Act, all applicants will be required to fill out an affidavit identifying all funding sources related to COVID-19, including but not limited to prior grants, insurance, Small Business Administration loans and grants, forgivable portions of Payroll Protection loans, and Economic Injury Disaster grants. Staff will use this information to ensure that the Small Business Emergency Assistance Grant (funded with federal assistance) is not used for the same purpose, i.e., creating a duplication of benefit. In addition to a certification from the applicant that their business was impacted by the Public Health Crisis, applicants will be required to answer questions about whether their business was "essential" (as defined by Executive Order), whether the business was able to remain open and to what capacity, and estimated revenue decline. Efforts will be made to ensure that potential grant applicants whose primary language is not English but is one of 11 languages that are prevalent in New Jersey will

have resources or information available to help them understand and potentially access the grant funding.

Similar to the application process developed for Phase 3 of the grant program, the Authority will use automation and interactivity such that businesses are immediately alerted if they enter information that may indicate ineligibility or trigger a manual review, giving them the opportunity to confirm that their responses are correct or choose not to proceed if they are ineligible. The Authority will make its best efforts to publicize the pre-registration and application opening date through a Notice of Funding Availability, information on its website, its social media channels, and outreach to the media and stakeholders to make this information available to the public in advance of the application period opening.

In expectation that the new phase will be oversubscribed, NJEDA staff and outside services hired for application review will process the applications on a first-come, first-served basis.

Consistent with the approach taken in Phases 1-3 of the grant program, the Members should be aware that in order to handle the volume of applications expected during this period, the Authority will be automating a number of the processing steps based on business rules as outlined in this memo. These streamlined processes were highly effective and allowed the Authority to review, approve and disburse a significant amount of funding to a large number of businesses as quickly as possible to meet the urgent need. Consistent with Phases 1-3, delegated authority is sought for staff (Chief Operations and Compliance Officer, Senior Vice President, Director – Recovery Front-End Operations, Director of Portfolio Relations) to approve individual applications in accordance with the terms set forth in the attached program specifications. Because the specifications are streamlined and will result in non-discretionary decisions, the delegated authority requested for approval also includes the delegated authority to decline applications.

Businesses whose applications are denied will have the right to appeal. Appeals must be filed within the timeframe set in the declination letter (which must be at least 3 days but no longer than 10 days). The Chief Operations and Compliance Officer will designate Hearing Officers who will review the applications, the appeals, and any other relevant documents or information. The Hearing Officer will prepare a Final Administrative Decision, which must be approved by the Chief Legal and Strategic Affairs Officer, a Senior Vice President, Vice President, Managing Director or Director.

Staff is also requesting delegated authority for the Chief Executive Officer, Chief Operations and Compliance Officer, Chief Legal and Strategic Affairs Officer to accept governmental (Federal, State or county) funding and/or unrestricted gifts or grants that would be used to fund Phase 4 of the Small Business Emergency Assistance Grant Program. Should governmental requirements required by law restrict the ability for the Authority to utilize any of the parameters described herein, staff will revisit the program requirements with the Members for modification and alignment with governmental requirements. If governmental requirements are in addition to these parameters or the parameters of Phases 1-3, staff is seeking delegated authority to add these requirements. Additionally, staff is requesting delegated authority to use previously received or new unrestricted private unrestricted gifts or grants for Phase 4 for any use that may extend beyond the NJ Treasury deadline for disbursement and the US Treasury deadline for grantee use of funds.

Finally, as each amount received has been dedicated to a specific phase or subset of applications within a phase, a possibility exists that in certain instances some funds may remain after all the relevant applications have been processed. In such instance, staff is requesting delegated authority to the Chief Executive Officer to amend the MOU with N.J. Treasury to state the final, actual amount of the CRF funds, to reallocate funds to or from other CRF-funded programs, and/or to return to N.J. Treasury the remaining funds after all eligible applications have been funded or as otherwise required by law or the MOU with N.J. Treasury.

Due to financial hardship, the Authority will collect no fees from the applicant for this program.

The attached product specifications further describe the program details and minimum eligibility requirements the applicant must meet to be considered for a Phase 4 grant.

Recommendation

Approval is requested for:

1. Approval of a Fifth Amendment to the Memorandum of Understanding with the New Jersey Department of the Treasury whereby the EDA will accept \$85 million in funds from the Coronavirus Relief Fund including administrative costs of up to \$4,000,000 and agree to comply with federal requirements for the use of those funds, and delegation to the Chief Executive Officer to accept up to \$200 million in total if additional funds become available;
2. The creation of a fourth phase of the Small Business Emergency Assistance Grant Program to make grant funding available for short-term operating support to a broad group of New Jersey SMEs that have been negatively impacted during the declared state of emergency. This program would be available to support businesses impacted by COVID-19, utilizing funds received by the Authority from the Coronavirus Relief Fund, consistent with the federal requirements associated therewith;
3. Approval to issue one or more purchase orders to 22nd Century Technologies Inc. to hire temporary employees to administer any phase of the grant program, or other COVID-19 program as needed, up to a maximum aggregate cost of \$923,000;
4. Delegation to Authority staff (Chief Executive Officer, Chief Operations and Compliance Officer, Chief Legal and Strategic Affairs Officer) to accept other governmental (Federal, State or County) funding and/or unrestricted gifts or grants, or dedicate previously received unrestricted gifts or grants, to fund Phase 4 of the Small Business Emergency Assistance Grant Program;
5. Delegation to Authority staff (Chief Executive Officer, Chief Operations and Compliance Officer, Chief Legal and Strategic Affairs Officer, or any Senior Vice President) to impose additional requirements as may be required by law as a condition of accepting governmental (Federal, State or County) funding, provided that the requirements are consistent with the parameters of the program;

6. Delegation to Authority staff (Chief Operations and Compliance Officer, Senior Vice President, Director – Recovery Front-End Operations, Director of Portfolio Relations) to approve individual applications to the Small Business Emergency Assistance Grant Program (Phase 4) in accordance with the terms set forth in this memo and the attached program specifications, and because the specifications are streamlined and will result in non-discretionary decisions, the delegated authority requested includes the authority to decline and issue final administrative decisions, which must be approved by the Chief Legal and Strategic Affairs Officer, a Senior Vice President, Vice President, Managing Director, Director or Program Manager; and
7. Delegation to the Chief Executive Officer to (a) extend the deadline for disbursement and use of funds if the N.J. Treasury and/or CRF deadlines are extended, (b) reallocate funds from or to other CRF-funded programs, and/or (c) return to N.J. Treasury any amounts remaining after all applications have been processed and all eligible applications have been funded, or as otherwise required by law or the MOU with Treasury.



Tim Sullivan, CEO

Attachments

Exhibit A – Small Business Emergency Assistance Grant Program Phase 4 Specifications

Exhibit B – Amendment to N.J. Treasury MOU

Small Business Emergency Assistance Grant Program – Phase 4 Proposed Program Specifications	
Funding Source	<p>\$85,000,000 - from the Coronavirus Relief Fund (the “Fund”), as established under the Federal Coronavirus Aid, Relief, and Economic Security (CARES) Act. This amount will be allocated as follows; any additional funding contributed or donated beyond this \$85M would be available to any eligible Phase 4 applicant, regardless of whether they fall into the Restaurant, Child Care Providers, Micro-businesses, or Other small businesses category:</p> <ul style="list-style-type: none"> ▪ Restaurants: \$35 million of funding be reserved to support businesses classified as “Food Services and Drinking Places” under NAICS code 722 (described in this document as “Restaurants”), given the disproportionate impact these businesses have experienced due to COVID-19, including caps on on-location dining and unusual costs they incurred to adapt their business models for safe operations. 33 percent of the funding within this category will be directed to support entities that have a commercial business address located (fully or partially) in a census tract that was eligible to selected as New Jersey Opportunity Zone (i.e., a New Market Tax Credit census tract). Because this is a reserve to be used for the applications received, any amount of the 33 percent Opportunity Zone eligible reserve that remains after processing all applications from entities in Opportunity Zone eligible census tracts would be used for any other applicant to the \$35 million restaurant funding pool. Similarly, any amount of this \$35 million pool that remains after processing all applications from restaurants would be used for any other eligible Phase 4 applicant. ▪ Child Care Providers: \$10 million of funding be reserved to support businesses classified as “Child Day Care Services” under NAICS code 624410 (described in this document as “Child care”), given the disproportionate impact these businesses have experienced due to COVID-19, including caps on capacity numbers and unusual costs they incurred to adapt their business models for safe operations. 33 percent of the funding within this category will be directed to support entities that have a commercial business address located (fully or partially) in a census tract that was eligible to selected as New Jersey Opportunity Zone (i.e., a New Market Tax Credit census tract). Because this is a reserve to be used for the applications received, any

Small Business Emergency Assistance Grant Program – Phase 4 Proposed Program Specifications	
Funding Source (continued)	<p>amount of the 33 percent Opportunity Zone eligible reserve that remains after processing all applications from entities in Opportunity Zone eligible census tracts would be used for any other applicant to the \$10 million childcare funding pool. Similarly, any amount of this \$10 million pool that remains after processing all applications from child care providers would be used for any other eligible Phase 4 applicant.</p> <ul style="list-style-type: none"> Micro-businesses: \$25 million of funding be reserved to support businesses that have had 5 or fewer FTEs in each of their past eight quarters of WR-30 filings (including businesses with no FTEs), given the unique financial vulnerability experienced because of COVID-19 by micro-businesses, which typically have lower financial reserves. 33 percent of the funding within this category will be directed to support entities that have a commercial business address (or home address for home-based businesses) located (fully or partially) in a census tract that was eligible to selected as New Jersey Opportunity Zone (i.e., a New Market Tax Credit census tract). Because this is a reserve to be used for the applications received, any amount of the 33 percent Opportunity Zone eligible reserve that remains after processing all applications from entities in Opportunity Zone eligible census tracts would be used for any other applicant to the \$25 million micro-business funding pool. Similarly, any amount of this \$25 million pool that remains after processing all applications from micro-businesses would be used for any other eligible Phase 4 applicant. Other small businesses: The remaining \$15 million of funding will be reserved to support businesses that are not eligible under the micro-business category. 33 percent of the funding within this category will be directed to support entities that have a commercial business address (or home address for home-based businesses) located (fully or partially) in a census tract that was eligible to selected as New Jersey Opportunity Zone (i.e., a New Market Tax Credit census tract). Because this is a reserve to be used for the applications received, any amount of the 33 percent Opportunity Zone eligible reserve that remains after processing all applications from entities in Opportunity Zone eligible census tracts would be used for any other applicant to this \$15 million funding pool. Similarly, any

Small Business Emergency Assistance Grant Program – Phase 4 Proposed Program Specifications	
	<p>amount of this \$15 million pool that remains after processing all applications would be used for any other eligible Phase 4 applicant.</p> <p>An applicant is only eligible for one allocation of funding. For example: if a business is eligible for the Restaurant or Child Care Providers allocation, as determined by its NAICS code, it can only apply for that specific allocation and not the Micro-business or other small business allocation.</p>
Program Purpose	<p>To provide short-term, immediate payroll and working capital support to New Jersey small and medium sized enterprises (businesses and non-profits) (“SMEs” or “businesses”) that have been negatively impacted during the declared state of emergency, thereby helping to stabilize their operations and minimizing any potential furloughs and/or layoffs.</p>
Eligible Applicants Eligible Applicants: (continued)	<p>Applicants must be SMEs with no more than 50 Full Time Equivalent employees (FTEs). The Authority will utilize the New Jersey WR-30 filings with the NJ Department of Labor (DOL). Initially, the highest FTE count of the past eight quarters —1st Quarter 2019 – 4th Quarter 2020— will be used, enabling businesses to receive the award corresponding to their peak headcount in 2019 or 2020 rather than their current headcount, which may reflect substantial headcount declines due to significant losses in revenue during the COVID-19 pandemic. To determine eligibility, the 4th Quarter 2020 WR-30 or 3rd Quarter 2020 WR-30, whichever is the most recently filed, will be reviewed. If the most recent WR-30 FTE count is less than the eligibility threshold, the business will be eligible and receive a grant award based on the largest FTE band. Implied FTE calculations will be rounded to the nearest FTE (e.g., 2.49 FTE would be counted as 2 FTE for the program, whereas 2.50 FTE would be counted as 3 FTE). While the calculation of FTEs is based on weeks worked and wages as reported on the WR-30 filing, in no event will a company receive grant funding based on a number of FTEs that exceeds the number of employees employed by the company, EXCEPT that if a sole proprietor or other applying entity has no FTEs, it may be eligible for the minimum grant award based on business type. For entities like sole proprietors the NJEDA will work with the Department of</p>

Small Business Emergency Assistance Grant Program – Phase 4 Proposed Program Specifications	
Eligible Applicants: (continued)	<p>Treasury, Division of Taxation, to identify tax filing status.</p> <p>The SME must have a physical commercial location in the State of New Jersey (e.g., an office, a physical point of sales, a warehouse, manufacturing facility, etc.). With regard to home-based businesses, the home must be located in New Jersey.</p> <p>Non-profit entities organized under Internal Revenue Code section 501(c) will be eligible, with the exception of organizations whose primary activity is political lobbying.</p> <p>Prohibited businesses include, but are not limited to: gambling or gaming activities; the conduct or purveyance of “adult” (i.e., pornographic, lewd, prurient, obscene or otherwise similarly disreputable) activities, services, products or materials (including nude or semi-nude performances or the sale of sexual aids or devices); any auction or bankruptcy or fire or “lost-our-lease” or “going-out-of-business” or similar sales; sales by transient merchants, Christmas tree sales or other outdoor storage; any activity constituting a nuisance; or any illegal purposes.</p> <p>Businesses that were approved for grant funding under Phase 1-3 of the Small Business Emergency Assistance Grant Program will be eligible for Phase 4 funding. Funding received in Phases 1-3 will not affect the award sizes these businesses are eligible to receive in Phase 4. However, businesses that applied in Phase 1 - 3 will need to re-apply and submit all required documentation regardless of their prior application.</p> <p>CEO/equivalent officer of the SME must self-certify that the firm:</p> <ul style="list-style-type: none"> • Was in operation on February 15, 2020; • Will make a best effort not to furlough or lay off any individuals from the time of application through six months after the end of the declared state of emergency. SMEs that have already furloughed or laid off workers from the time of application must make a best-effort pledge to re-hire those workers as soon as possible. Any material breach of its best efforts certification may result in

Small Business Emergency Assistance Grant Program – Phase 4 Proposed Program Specifications	
Eligible Applicants: (continued)	<p>the NJEDA seeking repayment of the grant;</p> <ul style="list-style-type: none"> • Has been negatively impacted by the COVID-19 declared state of emergency on March 9, 2020 (e.g., has been temporarily shut down, has been required to reduce hours, has had at least a 20% drop in revenue, has been materially impacted by employees who cannot work due to the outbreak, or has a supply chain that has materially been disrupted and therefore slowed firm-level production); and • Has a material financial need that cannot be overcome without the grant of emergency relief funds at this time (e.g., does not have significant cash reserves that can support the SME during this period of economic disruption). <p>SME must be registered to do business in the State of New Jersey, as evidenced by a current registration status from the Division of Taxation. If SME is not recognized by the Division of Taxation, SME must provide proof of registration prior to February 15, 2019 and a valid Business Registration Certificate (BRC). SME will have 4 weeks from initial notification from the NJEDA to satisfy that requirement. No grant agreement will be executed without a current registration status from the Division of Taxation or a valid BRC.</p> <p>SME must satisfy Taxation’s requirement to ensure that the SME does not have tax debts due to the State. As with Phases 1-3, the applicant shall certify that it does not owe any taxes and will be subject to repayment if the certification is not correct.</p> <p>SME must be in good standing with the Department of Labor, with all decisions of good standing at the discretion of the Commissioner of the Department of Labor. If the SME is regulated by the Division of Alcoholic Beverage Control (ABC), then it must also be in good standing with ABC, with all decisions of good standing at the discretion of the ABC. If the SME is regulated by the Department of Human Services (DHS) then it must also be in good standing with DHS, with all decisions being at the discretion of the DHS. If the SME is regulated by the</p>

Small Business Emergency Assistance Grant Program – Phase 4 Proposed Program Specifications	
	<p>Department of Children and Families (DCF) then it must also be in good standing with DCF, with all decisions being at the discretion of the DCF.</p> <p>Entities with multiple EIN can submit one application per EIN. Businesses with multiple locations but only one EIN will be limited to one application (under the sole EIN).</p> <p>Additional eligibility requirements may apply, which will be based on any applicable Federal requirements tied to the CARES Act funding. This may include, but is not limited to:</p> <ul style="list-style-type: none"> • applicants must acknowledge and agree to the requirement that grant proceeds be can only be used for eligible uses as defined below, • a restriction on duplication of benefits that could exclude potential applicants that have already received emergency COVID-19 assistance, and • a requirement that the applicant demonstrate that it has had negative impacts from COVID-19.
Eligible Uses	<p>Grant funding to be used for reimbursement of lost revenue as result of the business interruption caused by COVID-19 between March 1, 2020 and the date of the grant agreement (which must occur with enough time for EDA to disburse funding prior to the MOU and federal deadline). If the grant amount for the applicant is greater than the unmet need, the amount will be determined in \$500 increments, not to exceed the amount of need. Applicants with an unmet need between \$500 and \$1,000 the minimum Grant award shall be \$1,000; no grant amount will be approved if the unmet need is less than \$500.</p> <p>Funding cannot pay for capital expenses, including construction.</p>
Application Process	<p>Online application. Applications will be accepted on a first-come, first-served basis, based upon the date in which the Authority receives a completed application submission. The Phase 4 application will open 2 days earlier for businesses, in any category, that were not approved for Phase 3 funding</p>

Small Business Emergency Assistance Grant Program – Phase 4 Proposed Program Specifications									
Grant Amounts	<p>Award sizes for all categories including “Food Services and Drinking Places” businesses with NAICS beginning with 722 and “Child Care Providers” businesses with NAICS code 624410, Micro-Businesses and Small Businesses</p> <table border="1"> <tr> <th>FTE band</th><th>Award size</th></tr> <tr> <td>5 FTEs or fewer, including businesses with no FTEs</td><td>\$10,000</td></tr> <tr> <td>6-25 FTEs</td><td>\$15,000</td></tr> <tr> <td>26-50 FTEs</td><td>\$20,000</td></tr> </table> <p>FTE will be determined for award size in the same manner as for eligibility.</p>	FTE band	Award size	5 FTEs or fewer, including businesses with no FTEs	\$10,000	6-25 FTEs	\$15,000	26-50 FTEs	\$20,000
FTE band	Award size								
5 FTEs or fewer, including businesses with no FTEs	\$10,000								
6-25 FTEs	\$15,000								
26-50 FTEs	\$20,000								
Funding Disbursement	Funding to be fully disbursed as quickly as possible upon approval of grant application.								
Fees	Due to financial hardship, the Authority will collect no fees from the applicant for this program.								
Appeals	Businesses whose applications are denied will have the right to appeal. Appeals must be filed within the timeframe set in the declination letter (which must be at least 3 days but no longer than 10 days). The Chief Operations and Compliance Officer will designate Hearing Officers who will review the applications, the appeals, and any other relevant documents or information. The Hearing Officer will prepare a recommended decision, which must be approved, and a Final Administration Decision issued, by staff in accordance with delegated authority.								
Board Approval	Delegation to Authority staff (Chief Executive Officer, Chief Operations and Compliance Officer, Chief Legal and Strategic Affairs Officer,) to accept other governmental (Federal, State or County) funding and/or unrestricted gifts or grants, or dedicate previously received unrestricted gifts or grants, and to the Chief Executive Officer to accept up to \$200 million in total if additional CRF funds become available, to fund Phase 4 of the Small Business								

Small Business Emergency Assistance Grant Program – Phase 4 Proposed Program Specifications	
	<p>Emergency Assistance Grant Program.</p> <p>Delegation to Authority staff (Chief Executive Officer, Chief Operations and Compliance Officer, Chief Legal and Strategic Affairs Officer) to impose additional requirements as may be required by law as a condition of accepting governmental (Federal, State or County) funding, provided that the requirements are consistent with the parameters of the program.</p> <p>Delegation to Authority staff (Chief Operations and Compliance Officer, Senior Vice President, Director – Recovery Front-End Operations, Director of Portfolio Relations) to approve individual applications to the Small Business Emergency Assistance Grant Program (Phase 4) in accordance with the terms set forth in this memo and the attached program specifications, and because the specifications are streamlined and will result in non-discretionary decisions, the delegated authority requested includes the authority to decline and issue final administrative decisions, which must be approved by the Chief Legal and Strategic Affairs Officer, a Senior Vice President, Vice President, Managing Director, Director or Program Manager; and</p> <p>Delegation to the Chief Executive Officer to (a) extend the deadline for disbursement and use of funds if the N.J. Treasury and/or CRF deadlines are extended, (b) reallocate funds from or to other CRF-funded programs, and/or (c) return to N.J. Treasury any amounts remaining after all applications have been processed and all eligible applications have been funded, or as otherwise required by law or the MOU with Treasury.</p>

**FIFTH AMENDMENT TO
MEMORANDUM OF UNDERSTANDING
BETWEEN
THE TREASURER OF THE STATE OF NEW JERSEY
AND
THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

This Fifth Amendment to the Memorandum of Understanding (“Sixth Amendment”) made by and between the TREASURER (“Treasurer”) of the New Jersey Department of the Treasury (“Treasury”) and the NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY (“NJEDA”), an instrumentality of the State of New Jersey (the “State”). The NJEDA and the Treasurer may sometimes hereinafter be collectively referred to as the “Parties” and individually as a “Party.”

WHEREAS, the Parties entered into a Memorandum of Understanding dated May 26, 2020 (“Original MOU”) pursuant to which the Treasurer granted to the NJEDA \$51 million in CARES Funds, for reimbursement of the funding of the Phase One SME program, the new Phase Two SME Program, and future NJEDA administrative costs associated with both phases of the program (collectively, the “Program”) to assist businesses that have been impacted by the COVID-19 Pandemic; and

WHEREAS, the Parties amended the Original MOU by way of a First Amendment to the Memorandum of Understanding (“First Amendment”) on September 17, 2020 to use additional \$25 million, for further funding of Phase Two of the Program to be dedicated specifically to businesses in the 12 counties in New Jersey that did not receive previous CRF funding; and

WHEREAS, the Parties amended the Original MOU by way of a Second Amendment to the Memorandum of Understanding (“Second Amendment”) on October 14, 2020 to use additional \$73.5 million, for further funding under Phase Three of the Program, which expanded eligibility to all businesses in NJ, including home-based businesses and sole-proprietors, with the exception of a few prohibited businesses, and raised the employee eligibility cap to 50 FTEs and created reservations for restaurants and other food service businesses and for microbusinesses; and

WHEREAS, the Parties Amended the Original MOU by way of a Third Amendment (“Third Amendment”) on November 17, 2020 to use additional portions of the CARES Funds with new funding in an amount not to exceed \$54 million, which included \$3.5 million in unused funds from the NJEDA NJ Small and Micro Business PPE Access Program in accordance with a separate MOU for that program, and the remaining unused balance from Phase Two; and

WHEREAS, the Parties Amended the Original MOU by way of a Fourth Amendment (“Fourth Amendment”) on December 7, 2020 to use additional portions of the CARES Funds in an amount of at least \$12 million but not to exceed \$16 million in unused funds from the NJEDA NJ Small and Micro Business PPE Access Program in accordance with a separate MOU for that

program, and extend the deadline by which the NJEDA has to spend CARES funding to December 24, 2020 for the amount of \$4,000,000; and

WHEREAS, the Parties subsequently extended the deadline to disburse funds via Extension Amendments executed on December 23, 2020, January 29, 2021 and March 23, 2021; and

WHEREAS, the continuation of the COVID-19 Pandemic continues to seriously impact the economic viability of SMEs as they face difficulties meeting payroll obligations and supporting basic operating expenses and these challenges are expected to continue; and

WHEREAS, there continues to be further need by non-profits and small businesses from the deepening economic effects of the public health emergency; and

WHEREAS, in response to the continuation of the COVID-19 Pandemic, Congress enacted the Consolidated Appropriations Act, 2021 P.L. 116-260; and

WHEREAS, the Consolidated Appropriations Act, 2021 provides, among other things, an extension to December 31, 2021 of the deadline for use of CARES Funds; and

WHEREAS, to further support SMEs, the NJEDA will create a fourth phase of the Program to make grant funding available for short-term operating support to a broad group of New Jersey small and medium sized businesses and non-profits that have been negatively impacted during the declared state of emergency, more fully set forth in Exhibit A and incorporated herein; and

WHEREAS, the Treasurer has determined that it would be in the best interest of the State to use a portion of the CARES Funds, in an amount not to exceed \$85 million to fund Phase Four of the Program and its associated administrative costs; and

NOW THEREFORE, in consideration of the foregoing the Parties hereby agree as follows:

1. All capitalized terms not otherwise defined herein shall have their respective meanings ascribed to them in the Original MOU and any amendments.
2. Section 1 of the Original MOU is hereby amended to read as follows:

Subject to the terms and conditions of this MOU, the Treasurer, as recipient of the CARES Funds shall make available to the NJEDA funds in the amount of at least Two Hundred Ninety-Four Million, Eight Hundred Thousand Dollars (\$294,800,000.00) (the "Grant Funds") for the purpose of funding the Programs. The initial amount of Fifty-One Million Dollars (\$51,000,000.00) was provided upon execution of the Original MOU, an additional amount of Fifteen Million, Three Hundred Thousand Dollars (\$15,300,000.00) was provided upon execution of a First Amendment, and an additional amount of Seventy-Three Million, Five Hundred Thousand Dollars (\$73,500,000.00) was provided upon execution of the Second Amendment. Fifty Million, Five Hundred Thousand Dollars (\$50,500,000.00) was provided upon

execution of the Third Amendment, and NJEDA reallocated the unused amount of Three Million, Five Hundred Thousand Dollars (\$3,500,000.00) from Phase I of the NJ Small and Micro Business PPE Access Program upon full execution of the Third Amendment. Pursuant to the Fourth Amendment, the NJEDA also reallocated Twelve Million Dollars from Phase II of the NJ Small and Micro Business PPE Access Program (and may reallocate up to an additional Four Million Dollars). The additional \$85,000,000.00 shall be made available upon full execution of this Fifth Amendment. The Grant Funds shall be allocated as follows:

- *\$5 million for reimbursement of the Phase One SME Program*
- *\$40 million for Phase Two SME Program, which final amount shall be determined by NJEDA and provided in writing to the Treasurer based on the amount of unused funding from the original \$45 million after all Phase Two applications are processed*
- *\$4.8 million for administrative costs of Phases 2 and 3 of the SME Program arising after the Original MOU*
- *\$10 million for Phase Two SME Program, which shall be dedicated to eligible businesses located in the 12 counties in New Jersey that did not receive CRF funding directly from the U.S. Department of Treasury and which final amount shall be determined by NJEDA and provided in writing to the Treasurer based on the amount of unused funding from the original \$15 million after all Phase Two applications are processed*
- *An amount not to exceed approximately \$150 million for Phase Three SME Program, which final amount shall be determined by NJEDA and provided in writing to the Treasurer based on the amount of unused funding from Phase Two that is reallocated to Phase Three and the amount of unused funding from Phase Two of the NJEDA NJ Small and Micro Business PPE Access Program that is reallocated to Phase Three*
- *Eighty-One Million Dollars (\$81,000,000.00) for Phase Four SME Program*
- *Four Million Dollars (\$4,000,000) for administrative costs of Phase Four SME Program*

3. Section 3.4 of the Original MOU is hereby amended to read as follows:

All Grant Funds must be disbursed by the NJEDA no later than September 30, 2021. NJEDA shall promptly return all unexpended Grant Funds. To ensure compliance with the CARES Act and U.S. Department of the Treasury requirements, all Grant Funds must be expended by grantees no later than December 30, 2021.

4. Except as otherwise provided in this Fifth Amendment, all of the terms, covenants and conditions of the Original MOU and any amendments and extensions thereto shall remain in full force and effect.
5. All references to the term “MOU” shall be deemed to refer to the Original MOU, as modified by any amendments and extensions thereto, including this Fifth Amendment.

6. The Fifth Amendment shall be effective as of the date of final execution by the parties (“the Effective Date”).

IN WITNESS WHEREOF, the Parties have executed and delivered this FIFTH AMENDMENT on the date set forth next to their respective signatures below, but effective as of the date set forth above. The Parties agree to accept electronic signatures.

Treasurer of the State of New Jersey

Date: _____

By: Elizabeth Maher Muoio

New Jersey Economic Development Authority

Date: _____

By: Tim Sullivan, Chief Executive Officer

Attachments: Exhibit A- Phase Four Specifications

AUTHORITY MATTERS



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: April 14, 2021

RE: Gap Funding to Support Microsoft Portal Application Development

Summary

The Members are asked to approve a max not to exceed of \$1,725,000.00 in new contract funding, based on task orders to allow the EDA to adhere to a strict schedule of launching new programs using Microsoft Portals which populates data directly into our CRM platform that is connected to our financial system.

A culmination of several circumstances converged that made the need for additional funds to be added to this contract while NJEDA builds and plans to release a new Public RFP for additional supporting services for our various Microsoft Cloud deployments. When Covid began, there was no need for additional outside support beyond a few programming contractors derived from an existing state contract once Crowe completed the work on Project Enable, which was to occur in November 2020. However, in light of Covid, the following unexpected requirements were realized. First, NJEDA needed to adopt a new application Portal solution because of the volume of the Covid work. Second, there is new and ongoing existing Covid work that utilizes this new technology. Third, NJEDA was tasked with delivering 15 new products as part of the Governor's Economic Plan. Fourth, there are 14 additional products related to the State's Covid response and other new programs approved by the board over the course of the last year. Lastly, NJEDA had no time to develop the bench strength or expertise to deploy applications or backend support, and NJEDA seeks this Amendment in part to extend the Crowe contract on a month-to-month basis until a new RFP can be issued and a new Contract can be awarded. As such, Staff are asking for enough funds to cover seven months of funding which would allow for any number of potential contingencies that arise during the public RFP bidding process. NJEDA will be issuing individual Task Orders for each development item, and all work will stop and no more monies will be committed once a winning bidder is selected. Crowe will not be entitled to any funds beyond what is provided for in the Task Orders.

Background

In November 2014, the Authority awarded Crowe LLP a maximum, not-to-exceed \$5,552,700.97 contract for consulting services to assist with process improvements, replacing the Authority's twenty-plus year-old Microsoft FoxPro database (LMS) with Microsoft Dynamics CRM, and an integrated commercial loan application, Tech PG's Enable. The initial term of the contract was two (2) years with three (3) one-year extension periods. The RFQ/P and the contract contemplated optional additional work at the hourly rates submitted in the fee schedule. The implementation of this RFQ/P became known at the EDA as Project Enable. Since the original RFQ/P of \$5,552,700.97, the Board has approved four additional Amendments including Amendment 1 dated October 12, 2018 in the amount of \$750,000 where the EDA accepted credits from Crowe and expanded the original Scope of work bringing the total contract amount to \$6,302,700.97. Concurrently, the NJEDA approved an additional \$150,000 contingency as to this Amendment 1. Amendment 2 dated September 10, 2019, for complex data transformation was in the amount of \$400,000 bringing the total to \$6,702,700.97. Concurrently, the NJEDA approved an additional \$100,000.00 contingency for Crowe to perform work to address continued data conversion, user acceptance testing complexities, and creation of system reports in order to complete the work required to complete the project. Amendment 3 dated September 10, 2019, for additional functionality not contemplated during the original RFQ/P five years prior again expanded the original Scope of Work in the amount of \$1,050,000.00 bringing the total contract amount to \$7,752,700.97. Project Enable went live in July 2019, but there was still work and configuration that needed to continue. When March 2020 arrived, Project Enable was on track to be completed in November of 2020 and there was enough funding to finish the work. Instead, Covid arrived in March of 2020 the EDA needed to expand our abilities to rapidly deploy massive numbers of new Covid Grant applications the federal government directed into our new CRM system. In October 2020, the Board approved Amendment 4 in the amount of \$1,050,000 which brought the total contract amount to \$8,802,700.97. Amendment 4 funds of \$625,000 were used for Covid response and the remainder for additional non-Covid work described in Amendments 1, 2 & 3, plus the launching of the board approved PK Zip program using Portals and preparing Portals for Small Business Emergency Assistance (Phase 4). Amendment 4 also extended the contract through November 2021.

Crowe did successfully build the new intake applications using a new cloud technology called Microsoft Portals. This technology is directly integrated to our new Project Enable CRM system and is able to handle the concurrent load of thousands of simultaneous applications submittals into the EDA that would have overwhelmed our legacy Online Application.

RFP for Microsoft Support Services

NJEDA recognizes that the Authority will need ongoing and continued support to help launch many new programs using this new Portals Technology. Staff are working to issue a RFP for Microsoft Cloud Support Services over the next several months as the current remaining projects funds will be exhausted by the end of April 2021. Funding in this new request will only be used as a stop-gap measure until an award is issued for the RFP for Microsoft Cloud Services. The funding will continue to operate using the task order system developed under the prior amendments for critically necessary work at the EDA's sole discretion. As such, Crowe will not be entitled to the total maximum not to exceed budget provided in this Amendment, but rather only the amount provided by the EDA's task order request.

New Funding

But for the changes required as a result of the COVID-19 pandemic and new programs being launched, Crowe would have completed work on Project Enable in November 2020 and no additional outside support would have been required to support normal day-to-day operations of the EDA based upon the prior 20 years of workflow and ITS system demands. Our current online application was unable to support the demands of Covid products, nor does it allow for rapid development of new applications. There are five buckets that this Gap Funding will have to fill, driven by the sudden, unexpected migration to a new online application platform. The first part of the funding required is \$250,000 to complete the original work of Project Enable that continues to get bumped because of the pressing demands of Covid related programs. Only 1/3rd of the Project Enable work has been completed since Covid began, and most of these deliveries are imperative to the business continuity and Accounting. There is an additional requirement of \$200,000 to support Enable's post "go live" support for Small Business Emergency Assistance (Phase 4) and other Covid related programs that emerge while the ongoing crisis continues. The third bucket of \$325,000 will be required to enhance the existing Portal interface, workflows, data clean up and convert static code written outside of the Microsoft Platform to perform real time date checks with other New Jersey agency databases and credit processing. The fourth bucket of \$250,000 will ensure that the EDA deliver applications fourteen (14) new programs administered by the Authority. The final bucket of \$700,000 will ensure that the EDA can deliver on the Governor's Economic Plan for fifteen (15) new product launches that have tight deadlines. The total count for new programs to be administered equals twenty-nine (29).

The EDA is augmenting its current staff by adding more consultants using a state contract vehicle to help build CRM capacity to handle the post-application workflows for the new products. We are also retraining existing Full-Time programmers in the newest Microsoft technologies and working with several staff from the Office of Innovation to take the lead on developing applications to launch the new programs. NJEDA will continue using Crowe until the new RFP is issued and the Contract awarded as this will ensure NJEDA can meet the needs and deadlines for all of the critical program launches that are forthcoming in the short-term.

Recommendation

In summary, approval is requested for a max not-to-exceed of \$1,725,000.00 in new contract funding to support continued Microsoft Portals application development while the new RFP for services is publicly bid. This would bring the total with all Amendments to \$10,527,700.00. The new work will be structured as separate task orders under the original contract with Crowe LLP, and all Crowe work will cease upon award of the RFP for Microsoft Support Services.



Tim Sullivan, CEO

Prepared by: Thomas Murphy



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: April 14, 2021

RE: 21st Century Redevelopment Program – Modifications & Application Reopening

Summary

The Members are requested to approve:

1. Utilization of \$500,000 through an appropriation under the New Jersey Economic Recovery Act (P.L. 2020, c. 156) to additionally fund the 21st Century Redevelopment Program - a competitive program to award grants to communities for economic development plans with solutions and strategies for commercial “ghosts” or “stranded assets.” This additional funding will result in a total program pool of \$750,000, enabling the Authority to provide a total of 15 grants at a grant amount of up to \$50,000 each.
2. Approval to reopen the application period for the 21st Century Redevelopment Program following a public notice of funding availability. The Authority expects to reopen the application no earlier than May 8, 2021, after which applications will be accepted for a 45-day period.

Background

In October 2018, the Members approved the creation of the 21st Century Redevelopment Program to provide grant funding for communities to develop economic plans for the revitalization and repurposing of assets such as shopping malls, office parks, plazas, and other large commercial/retail facilities. At one time these assets were economic drivers for the community, but have since become underutilized or abandoned as a result of evolving economic trends, leaving communities to deal with losses of tax revenues, ongoing costs of maintaining infrastructure and roads around these properties, and a lack of resources to solve the issues.

The Members subsequently approved enhancements to the program in August 2019, recognizing that some of the requirements surrounding eligible properties were limiting and therefore resulted in a number of communities unable to access the program. After the August 2019 approval, a 90-day application window was opened, with all applications due by April 9, 2020.

Approximately one month before the closure of this application period, Governor Murphy issued Executive Order No. 103 declaring a state of emergency and public health emergency across all 21 counties in New Jersey, and subsequently issued Executive Order No. 107 directing all office workers to stay home. In recognition of the fact that many potential grant applicants communicated significant challenges completing their application during this public emergency crisis, the Members approved delegated authority in April 2020 for staff to reopen the application process, for a period of 45-days, on a date in which staff determines that the Authority and businesses have returned to “normal business operations.”

Modifications & Application Reopening

The language as drafted in the April 2020 memorandum gives the Authority staff delegated authority to determine the date at which the Authority and businesses have returned to “normal business operations.” However, this is a subjective judgement for staff to make based on a number of variables that are difficult to predict and have persisted longer than originally anticipated, as businesses across the state are in varying stages of recovery and still operating under COVID-19 related restrictions, and nearly all Authority staff are continuing to work remotely as the COVID-19 pandemic persists, more than 12 months after Governor Murphy’s Executive Orders. In addition, the Authority has and will continue to administer several recovery programs of extremely large scale and volume, which are very much outside of the “normal” course of business for the Authority. Given these factors, in discussion with the Office of the Attorney General, staff felt the most transparent approach was to request the Members approval at this time to reopen the application period following a Notice of Funding Availability to be published in the New Jersey Register as soon as possible upon the Members’ approval of this request. If approved today, the Authority expects the application reopening date would be no earlier than May 8, 2021 and be open for a period of 45-days. The specific reopen date will be posted in the Notice of Funding Availability, in both the New Jersey Register as well as the Authority’s website.

The Authority did receive six applications under the prior application round, which were submitted by the original deadline of April 9, 2020. These applicants will have the option of withdrawing their application and resubmitting within the new application window or maintaining their existing application as filed. Given the time that has passed and evolving factors related to the pandemic, applicants that elect to keep their application on file will be asked to provide confirmation that the application remains factually accurate, and that the applicant can continue to meet the program requirements – specifically, the requirements to provide a 20 percent match of the grant amount, the six-month timeline to complete the planning project from the date the grant agreement is executed, and the commitment to participate in two information sharing sessions with other municipalities or counties that may be facing similar planning challenges.

Furthermore, the Members are requested to approved \$500,000 funding through an appropriation under the New Jersey Economic Recovery Act (P.L. 2020, c. 156) to supplement the \$250,000 from the Economic Recovery Fund, which would increase the total program pool to \$750,000. Under this total program pool, the Authority expects to award up to 15 grants for a grant amount of up to \$50,000 each.

All other program parameters including, but not limited to, project eligibility and scoring criteria, remain as approved by the Members in the August 2019 memorandum. Those program specifications are attached for reference.

Request

The Members are requested to approve: 1) Utilization of \$500,000 through an appropriation under the New Jersey Economic Recovery Act (P.L. 2020, c. 156) to additionally fund the 21st Century Redevelopment Program; and 2) Approval to reopen the application for the 21st Century Redevelopment Program for a period of 45 days following a public notice of funding availability.

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

Tim Sullivan
Chief Executive Officer

Attachments

Exhibit A – 21st Century Redevelopment Program Specifications – August 2019

EXHIBIT A
21st Century Redevelopment Program
Proposed Specifications
August 2019

Total Funding Amount	Up to \$250,000
Administrating Agency	EDA
Program Purpose & Overview	<p>A number of demographic and economic trends are re-shaping where people in New Jersey live and work, with many suburbs experiencing an outmigration of jobs and population similar to those that cities have experienced previously.</p> <p>A glut of corporate campuses, underutilized malls and shopping centers, and vacant office buildings left behind by the 1980-1990s building boom have become a drain on many New Jersey communities. As a result, these communities are dealing with the loss of tax revenues, the costs of maintaining infrastructure and roads around these properties, and a lack of resources to solve the issues. These challenges are compounded by corresponding population losses linked to the preference of millennials and young people to live in walkable communities with vibrant mixed-use corridors.</p> <p>To allow New Jersey to better attract economic activity and jobs, the Authority intends to support municipalities, counties, or redevelopment agencies to produce plans that will explore strategies and next steps to repurpose these properties or plans to assist in pursuing an area in need of redevelopment designation for these properties. In this pilot venture, The Authority will award grants of up to \$50,000 each for proposal that is selected based on the evaluation criteria set forth below.</p>
Minimum Eligibility Requirements	<ul style="list-style-type: none"> • Applicant must be a municipality, county, or redevelopment agency • Must display that persistent vacancy of office or retail properties is evident or likely evident in the community in question • Relevant properties may be a building, a corporate campus that was used by a single entity, buildings that are adjacent to each other, or buildings across a parking surface or structure that is dedicated for use by the buildings; <u>retail, shopping malls, plazas, or office parks</u> • Must submit a timeline that demonstrates that planning can be completed within six months of execution of agreement with Authority • 20% match of grant amount required - with preference for local

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	<p>match from property owners or an anchor institution (institution of higher education, medical center, foundation, etc.). Match can be either financial, or in-kind resources with demonstrated value greater than or equal to 20% of the grant amount.</p> <ul style="list-style-type: none"> • Entity must agree to participate in at least 2 events hosted by EDA to share lessons learned with other New Jersey municipalities and counties, or redevelopment agencies facing similar challenges • Applicant acknowledges it will share ownership of deliverables with EDA for the purpose of making results publicly available to foster a dynamic discussion relating to persistent office and retail vacancy • A municipality, a county or redevelopment agency may only submit one application each in a lead role but can be included as a partner in additional applications where they play a non-lead role. A proposal on behalf of a county does not preclude a municipality within that county from submitting their own proposal
Award Amount	Up to \$50,000 per applicant.
Eligible Projects	<ul style="list-style-type: none"> • Applications must include plans for specific deliverables, which must be completed six months after closing of funding agreement between EDA and recipient. <ul style="list-style-type: none"> ○ Upon written request, Authority may authorize a three-month extension to the grant recipient's deadline for plan completion. <p>Planning activities in the proposed initiative can include, but are not limited to, the following:</p> <ul style="list-style-type: none"> • Legal analysis to explore the appropriateness of designating one or more relevant properties in the community as an area in need of redevelopment • Stakeholder engagement and facilitation to identify community desires and needs • The identification of appropriate funding sources to support community lead reuse of one or more properties • Cataloging relevant retail and office properties in a community and identifying priority sites when considering community needs

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	<ul style="list-style-type: none"> • Economic analysis relating to the feasibility of various redevelopment and/or reuse scenarios • Land use planning identifying the most suitable reuse scenarios <p>Planning proposals should focus on any number of the following elements:</p> <ul style="list-style-type: none"> • Improving livability and healthy outcomes for the local population • Promoting walkable neighborhoods and improving accessibility and mobility • Creating greater social, economic, and environmental sustainability • Expanding entrepreneurial opportunities and support of local businesses • Driving economic growth for the locality and region
Scoring Criteria	<p>Highest Score Possibility: 100 points Minimum Score Requirement: 65 points</p> <p>Criteria #1 will be measured along the below scale:</p> <p><i>0 points – Feature is absent.</i> <i>1 – 7 points – Feature is present but shows deficiencies.</i> <i>8-11 points – Meets requirements.</i> <i>12-17 – points – Marginally exceeds requirements.</i> <i>18-20 points - Significantly exceeds requirements.</i></p> <p>Criteria #1 – Identification of Project Purpose and Merits (Up to 20 points) – Proposals identify opportunities for creating vibrancy in the community, including but not limited to:</p> <ul style="list-style-type: none"> • Presence of an articulated public use component (such as public space, parks, etc). • Ability to address locality-specific needs and challenges. • Ability to identify and balance local needs with those of the region and state as a whole. • Emphasis on long term viability and adaptability of a given concept.

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	<ul style="list-style-type: none"> • Dedication to principles of environmental sustainability, such as stormwater management and reduced carbon emissions. • Ability to consider and mitigate any past difficulties that created challenges for a given asset/grouping of assets. <p>Criteria #2 will be measured along the below scale:</p> <p><i>0 points – Plan does not address scope and scale of site.</i> <i>1 – 7 points – Site has minimal scope and scale.</i> <i>8-11 points – Site has moderate scope and scale.</i> <i>12-17 – points – Site has significant scope and scale.</i> <i>18-20 points - Significantly exceeds requirements. Site has most significant scope and scale of all applicants.</i></p> <p>Criteria #2 – Scope and Scale (Up to 20 points)- Preference will go to identified project areas that can display scope and scale, which will be evaluated based on the following:</p> <ul style="list-style-type: none"> • Total available square footage on the site, including parking. • Size of the site relative to the greater municipal area (i.e. as a percentage). • Vacancy rate and/or length of time the site has been vacant. • Vacant commercial/office space of or within the site relative to all vacant space in the greater municipal area (i.e. as a percentage) • Historically site(s) responsible for providing an outsized portion of local employment opportunities in the community (i.e. as a percentage) • Historically significant portion of municipal tax levy (i.e. as percentage) <p>Criteria #3 will be measured along the below scale:</p> <p><i>1-5 points – Demonstrates minor structural challenge</i> <i>6-12 points - Demonstrates moderate structural challenges</i> <i>13-20 points – Demonstrates significant structural challenges</i></p> <p>Criteria #3 - Commitment to Social Impacts (Up to 20 points) – Preference will go to sites located in municipalities facing inherent structural challenges (i.e. lacking public transit, planning resources, challenging</p>
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	<p>geography etc.).</p> <p>Criteria 4-6 will be measured along the below scale:</p> <p style="padding-left: 40px;">1-5 points- Feature is present but shows deficiencies 5-7 points -- Meets requirements 7-10 points – Significantly exceeds requirements</p> <p>Criteria #4 - Previous Record (Up to 10 points) – Preference will go to municipalities who can demonstrate a track record of:</p> <ul style="list-style-type: none"> • Partnership and engagement with private industry for purposes of re-development. • Adherence to the municipality’s affordable housing obligations • Dedication to principles of environmental sustainability. • Efforts to advance walkability and bike facilities in the municipality. <p>Criteria #5 - Regional Partnership (Up to 10 points)- Preference will go to entities who are able to display strong local leadership as well as regional collaboration towards re-development efforts. Applications should demonstrate a commitment by local leadership to engage in re-development projects with neighboring municipalities, the county, and/or higher-education institutions whether by a record of past project involvement or a commitment to future efforts, or both.</p> <p>Criteria #6 - Community Engagement (0 to 10 points) – Preference will go to communities that are able to display efforts to engage local residents and businesses in planning efforts. Local interest may be shown in the form of both past and present support, whether formal (municipal resolutions) or informal (community discussion and engagement).</p> <p>Criteria #7 will be measured along the below scale:</p> <p style="padding-left: 40px;">5 points – MRI Distress Score 30-39 7 Points – MRI Distress Score 40-49 10 Points – MRI Distress Score 50 or higher</p> <p>Criteria #7 - Municipal Revitalization Index Score (0 to 10 points) – The</p>
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	<p>Municipal Revitalization Index (MRI) serves as the State's official measure and ranking of municipal distress. The MRI ranks New Jersey's municipalities according to eight separate indicators that measure diverse aspects of social, economic, physical, and fiscal conditions in each locality.</p>
Application Process and Board Approval	<ul style="list-style-type: none">• Scoring committee to review applications based on publicly released scoring criteria• For an applicant to be eligible for a grant, an entity must meet a minimum score of 65.• The five (5) eligible applications with the highest scores will be recommended to the Board for approval• Applications will be accepted for a period of no more than 90 days following the release of the application to the public.



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: April 14, 2021

SUBJECT: Memorandum of Understanding (MOU) with the New Jersey Board of Public Utilities, Governing a \$13.2 Million Funding Commitment by NJBPU Towards the New Jersey Wind Port (NJWP)

REQUEST

The Members are requested to approve a Memorandum of Understanding (MOU) between the Authority and the New Jersey Board of Public Utilities (NJBPU). The MOU commits the NJBPU to providing \$13.2 million in funding to the Authority to support the development of the New Jersey Wind Port (NJWP), which will help catalyze the State's offshore wind industry and will support the timely and cost-effective attainment of the State's goal of 100 percent clean energy by 2050. The MOU, enclosed at Attachment A, was approved the NJBPU's Board on March 24, 2021.

BACKGROUND

The NJBPU, as the State's energy regulator, is statutorily charged with promoting adoption of clean energy with jurisdiction over public utilities in the State, including the administration of monies collected through the Societal Benefits Charge ("SBC"), which are used to promote the development of clean, renewable sources of energy including offshore wind.

The NJBPU is also overseeing the solicitation of 7,500 MW of offshore wind energy by 2035, which will be critical to the State achieving its goal of 100 percent clean energy by 2050. For these reasons, NJEDA and NJBPU share a common interest in promoting the growth of New Jersey's offshore wind industry which will, in-turn, support the cost-effective and timely delivery of the State's offshore wind pipeline.

The use of SBC funds to support offshore wind-related activities at the NJWP is authorized by N.J.S.A. 48:3-60, which allows such expenditures to support Class I renewable energy projects, such as offshore wind, and authorizes the NJBPU to spend SBC funds to eliminate "existing market barriers ... with the objective of transforming markets", among other things.

MOU DETAIL

The MOU sets out the following conditions governing the Authority's use of NJBPU funds:

- Grant Funds will be used for the purposes of completing the Port's design, as well as for early site works, such as site preparation, initial earthworks and existing facility relocation/demolition. In addition, funds will be used to support establishing a reliable power connection to the Port, including a grid connection and on-site power system. In the first instance, this will include feasibility and design works for an on-site substation and distribution system;
- Grant Funds will be used exclusively to support the development of the NJWP;
- NJEDA agrees to return any Grant Funds not spent to the NJBPU within 60 days of the completion of Phase one of the Port; which is targeted to commence construction in 2021 and to reach completion in early 2024;
- NJEDA may assign the Grant Funds to a third-party as necessary to further the goals of this MOU, subject to receiving written approval from the NJBPU Director of the Division of Clean Energy;
- Grant Funds provided under this MOU shall not be used for overhead expenses, whether NJEDA's or that of any contracted third-parties; and
- At the expiration of the MOU, NJEDA will return any unused Grant Funds to NJBPU.

Under the terms of the MOU, NJEDA shall provide an update to NJBPU within 90 days of this MOU's effective date, including financial estimates for uses of the Grant Funds, and will be required to provide quarterly updates thereafter.

The MOU will be effective on the date it is fully executed by both Parties and shall continue for a period of five (5) years. It may be extended with written agreement by the Parties.

RECOMMENDATION

The Members are requested to approve a Memorandum of Understanding (MOU) between the Authority and the New Jersey Board of Public Utilities (NJBPU). The MOU commits the NJBPU to providing \$13.2 million in funding to the Authority to support the development of the New Jersey Wind Port (NJWP), which will help catalyze the State's offshore wind industry and will support the timely and cost effective attainment of the State's goal of 100 percent clean energy by 2050. The MOU, enclosed at Attachment A, was approved the NJBPU's Board on March 24, 2021.



Tim Sullivan, CEO

**Attachment A –
Memorandum of Understanding (MOU) with the New Jersey Board of Public Utilities
(NJBPU)**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made this 24th day of March 2021 by and between the New Jersey Economic Development Authority (“NJEDA”) and the New Jersey Board of Public Utilities (“NJBPU”). The NJEDA and the NJBPU are collectively referred to herein as the “Parties.”

WHEREAS, the NJEDA is an agency of the State of New Jersey (the “State”), in but not of the Department of Treasury, that serves as the State’s principal agency for driving economic growth, and is committed to making New Jersey a national model for inclusive and sustainable economic development by focusing on key strategies to help build strong and dynamic communities, create good jobs for New Jersey residents, and provide pathways to a stronger and fairer economy and;

WHEREAS, the NJBPU is the energy regulator for the State, which is statutorily charged with promoting adoption of clean energy with jurisdiction over public utilities in the State, including the administration of the monies collected through the Societal Benefits Charge (“SBC”), which are used to promote the development of clean, renewable sources of energy including offshore wind, solar, and other technologies; and

WHEREAS, Governor Murphy released the State’s 2019 Energy Master Plan (the “2019 Master Plan”) on January 27, 2020, which set a goal of 100 percent clean energy by 2050 and outlined a strategy to expand the use of clean energy in New Jersey through workforce training, investments in developing clean energy knowledge, and the growth of world-class research and development; and

WHEREAS, the 2019 Energy Master Plan identifies the offshore wind sector as critical to accelerating the development of renewable energy and reinforces New Jersey’s commitment to building 7,500 MW of offshore wind by 2035 as defined in Executive Order No. 92; and

WHEREAS, the NJEDA and NJBPU share a common interest in promoting the growth of the offshore wind industry, which is necessary to achieving the Governor’s goal to make New Jersey into the premier hub for offshore wind development along the Eastern Seaboard and vital to the cost-effective and timely deployment of offshore wind in the State; and

WHEREAS, the NJEDA has determined to undertake the development and construction of a wind port (the “New Jersey Wind Port”) for the purposes of offshore wind marshalling and manufacturing in the township of Lower Alloways Creek which, it is anticipated, will bring good, permanent, jobs to the region to support the State’s burgeoning offshore wind industry; and

WHEREAS, the use of SBC funds to support marshalling and manufacturing activities at the New Jersey Wind Port is authorized by N.J.S.A. 48:3-60, which allows such expenditures to support Class I renewable energy projects, such as offshore wind, and authorizes the NJBPU to spend SBC funds to eliminate “existing market barriers ... with the objective of transforming markets”, among other things; 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, it is agreed between NJEDA and NJBPU:

1. DUTIES OF THE PARTIES: To achieve the goals of this MOU, the Parties hereby agree as follows:
 - a. NJBPU will provide to NJEDA \$13.2 million in funding (the “Grant Funds”) upon execution of this MOU to support the development of the New Jersey Wind Port, a purpose-built facility dedicated to the marshalling of offshore wind projects and the manufacturing of offshore wind components.

In particular, Grant Funds will be used for the purposes of completing the New Jersey Wind Port’s design, as well as early site works, such as site preparation, initial earthworks and existing facility relocation/demolition. In addition, funds will be used to support establishing a reliable power connection to the New Jersey Wind Port, including a grid connection and on-site power system. In the first instance, this will include feasibility and design work for an on-site substation and distribution system.
 - b. NJEDA will use the Grant Funds exclusively to support the development and related activities of the New Jersey Wind Port.
2. NJEDA agrees to return any Grant Funds not so spent to the NJBPU Clean Energy Fund within 60 days of the completion of Phase I of the New Jersey Wind Port; which is targeted to commence construction in 2021 and to reach completion in 2024.
 - a. The NJEDA may use the Grant Funds to engage third-parties such as contractors and consultants as necessary to further the goals of this MOU, subject to receiving written approval from the NJBPU Director of the Division of Clean Energy, and further subject to the same terms and conditions as set forth in this MOU.
 - b. If NJEDA chooses not to continue with the proposed development of the New Jersey Port NJEDA shall notify the NJBPU and may propose amendments to this MOU. The NJBPU may also propose amendments to the Proposed Activities.
 - c. NJEDA may, in its discretion, utilize the assistance of consultants or contractors for New Jersey Wind Port development; provided that none of the Grant Funds provided under this MOU shall be used for overhead expenses.

- d. NJEDA shall provide an update to NJBPU within 90 days of this MOU's effective date and shall include financial estimates for uses of the Grant Funds, and shall provide quarterly updates thereafter, or more often as may be requested by NJBPU.
3. TERM: This MOU shall become effective on the date it is fully executed by both Parties and shall continue for a period of five (5) years. This MOU may be extended only by prior written agreement by the Parties. At the expiration of the MOU, NJEDA will return any unused Grant Funds to NJBPU.
4. SUBJECT TO THE AVAILABILITY OF FUNDING: The funding that NJBPU will provide under this MOU is subject to the availability of funds.
5. 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.
6. ASSIGNMENT: This MOU shall not be assignable but shall bind and inure to the benefit of the Parties hereto and their respective successors.
7. AMENDMENT: This MOU may be amended, supplemented, changed, modified or altered only by mutual agreement of the Parties in writing.
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 NJBPU regarding this MOU shall be addressed to the following person or his/her delegate or replacement:

Kelly Mooij
Director, Division of Clean Energy
New Jersey Board of Public Utilities
44 S. Clinton Avenue,
Trenton, NJ 08625

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

Jonathan Kennedy
Managing Director – Infrastructure
NJEDA
P.O. Box 990

Trenton, NJ 08625

10. This MOU is being entered into for the sole purpose of evidencing the mutual understanding and intention of the Parties.

IN WITNESS WHEREOF, the Parties have caused this MOU to be signed by their duly authorized representatives or designees to be hereunto affixed the day, month, and year first written above.

For the New Jersey Economic Development Authority: For the Board of Public Utilities:

Tim Sullivan
Chief Executive Officer

Joseph L. Fiordaliso
President

DATE

DATE



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: April 14, 2021

SUBJECT: Memorandum of Understanding (MOU) with the South Jersey Port Corporation (SJPC) Governing a Joint Feasibility Study – and Request for \$150,000 in Funding to Support the Study

REQUEST

The Members are requested to approve a Memorandum of Understanding (MOU) between the Authority and the South Jersey Port Corporation (SJPC). The MOU commits the parties to jointly developing a feasibility study on the potential expansion of the Port of Salem to accommodate offshore wind supply chain activities in support of the New Jersey Wind Port (NJWP) and commits the Authority to a not-to-exceed funding contribution towards the study of \$150,000.

The Memorandum, enclosed at Attachment A, was approved the SJPC's Board on March 30, 2021.

BACKGROUND

The Port of Salem is an existing shallow-draft port on the Salem River, approximately 2 miles (3.2 km) east of the Delaware River and approximately 54 miles (87 km) from the Atlantic Ocean. The Port, which is owned and operated the SJPC, handles a variety of bulk cargo, including construction aggregate (e.g. sand and gravel), various dry bulk, motor vehicles, as well as limited containerized freight. The Port site is approximately 28 acres, with capacity to expand its footprint. The Port has direct access to Rt. 49, Rt. 45 with access to US 130, I-295 and NJ Turnpike, as well as (disused) rail connection. The Port is designated as a Foreign Trade Zone.

NJEDA has been in discussions with the SJPC about the potential for the Port of Salem to support the activities of the proposed New Jersey Wind Port (NJWP), which is situated at Lower Alloways Creek, approximately 10 miles south of the Port of Salem on the Delaware River. The potential for the Port of Salem to serve as a feeder port to the NJWP, both during construction through the supply of construction materials, and on an ongoing basis through the supply of manufacturing components to the NJWP's tenants, has been substantiated through industry engagement. In particular, industry feedback has indicated that the Port of Salem has the potential to serve as a proximate intermodal hub, leveraging its road and rail links, as well as housing offshore wind supply chain entities that do not to be co-located with marshalling. Examples include manufacturers of towers, transition pieces, and other second and third-tier components.

Beyond broader economic opportunities, evaluating opportunities to invest in the Port of Salem is a critical racial equity opportunity, both for revitalizing the City of Salem and diversifying the offshore wind industry. Salem is the most distressed city in New Jersey with 42 percent of residents living in poverty, and more than half of residents are people of color (60 percent Black, 7 percent multi-racial).¹ An Opportunity Zone, Salem is also a rural city with fewer than 6,000 residents and a former hub for manufacturing. Potential expansion of the Port of Salem could catalyze a wider revitalization of the City and region as a hub for green manufacturing.

MOU DETAIL

The MOU sets out the scope and timing of the feasibility study, as well as the roles and responsibilities of each party. A summary is provided below:

- SJPC and NJEDA are each committing to a maximum-not-to-exceed amount of \$150,000 for the exclusive purpose of completing the feasibility study;
- SJPC will procure a qualified entity through a competitive process consistent with its procurement guidelines, with SJPC and NJEDA jointly developing a scope of work and evaluating proposals received using agreed price and non-price criteria;
- SJPC and NJEDA will jointly direct the work of the appointed contractor, including providing inputs and reviewing draft and a final report;
- SJPC will directly contract with the selected contractor, with NJEDA making payments to SJPC (for its share of costs) on an invoicing basis; and
- Both parties will enjoy the rights, including intellectual property rights, to rely upon, use and disseminate the Study, subject to agreed Confidentiality provisions.

The MOU will be effective for a period of two (2) years.

RECOMMENDATION

The Members are requested to approve a Memorandum of Understanding (MOU) between the Authority and the South Jersey Port Corporation (SJPC). The MOU commits the parties to jointly developing a feasibility study on the potential expansion of the Port of Salem to accommodate offshore wind supply chain activities in support of the New Jersey Wind Port (NJWP) and commits the Authority to a not-to-exceed funding contribution towards the study of \$150,000.

The Memorandum, enclosed at Attachment A, was approved the SJPC's Board on March 30, 2021.



Tim Sullivan, CEO

¹ U.S. Census Bureau. (2020). Tables DP05 and S2001, 2019 American Community Survey 5-Year Estimates. Retrieved 4 March 2021, from <https://data.census.gov/cedsci/profile?g=1600000US3465490>

**Attachment A –
Memorandum of Understanding (MOU) with the South Jersey Port Corporation**

**MEMORANDUM OF UNDERSTANDING BETWEEN THE SOUTH JERSEY PORT
CORPORATION AND THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made this _____ day of April 2021, by and between the South Jersey Port Corporation (SJPC) and the New Jersey Economic Development Authority (NJEDA). The SJPC and the NJEDA are collectively referred to herein as the “Parties”; and

WHEREAS, the SJPC is a state-created corporation, in but not of the Department of Treasury, which provides world-class facilities and beneficial services, which support and accommodate the transportation of goods and commodities, both by water and by land, and foster regional economic development for the benefit of the Port District, including the cities of Camden, Paulsboro and Salem, New Jersey. The SJPC owns and operates the Joseph A. Balzano and Broadway Terminals in the Port of Camden, the Salem Marine Terminal at the Port of Salem and the Paulsboro Marine Terminal at the Port of Paulsboro; and

WHEREAS, the NJEDA is an independent state agency, in but not of the Department of Treasury, that serves as the State’s principal agency for driving economic growth and is committed to making New Jersey a national model for inclusive and sustainable economic development by focusing on key strategies, including undertaking real estate and infrastructure projects, 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 NJEDA, on behalf of the State, is currently developing the New Jersey Wind Port (NJWP) in Lower Alloways Creek, Salem County which, upon completion, is intended to serve as the Mid-Atlantic region’s principal offshore wind marshalling and turbine component manufacturing hub; and

WHEREAS, with the SJPC owning approximately twenty-five acres adjacent of the Salem Port and in the proximity the property being available nearby, the economic prospects for the Salem Port are enhanced, both for the potential to host offshore wind supply chain companies as well as port-reliant industries more broadly; and

WHEREAS, the SJPC and the NJEDA are jointly receptive to funding a Planning and Economic Development Study (“Study”) of the growth potential of the Salem Port; and

WHEREAS, Governor Murphy released the State’s 2019 Energy Master Plan which set a goal of 100 percent clean energy by 2050, and given the State’s commitment to facilitate 7.5 GW of offshore wind capacity by 2035, which brings into play the NJWP in Salem County, specifically in Lower Alloways Creek, and possibly the Salem Port, with access to the Atlantic Ocean which could play a key role in delivering the Governor’s offshore wind pipeline and, by extension, the timely and cost effective transition to clean energy; and

WHEREAS, it is anticipated that a Study of the Salem Port's economic growth potential, when considering the proximity of the NJWP and the open industrial space in the City of Salem, near the Salem Port, will identify substantial opportunities. The impact of the aforementioned offshore wind activity and open industrial space will substantially impact the value of the Salem Port, with its existing access to the Atlantic Ocean and existing freight rail and road links. The Study could be completed within the year 2021; and

WHEREAS, the parties are receptive to jointly funding the Study with equal amounts from each party, but with each party's total commitment not to exceed \$150,000; and

WHEREAS, the SJPC and the NJEDA share a common interest in promoting the growth of the Salem Port, and in attracting offshore wind supply chain jobs and investment to the State; and

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

NOWHEREFORE, it is agreed between the SJPC and the NJEDA as follows;

1. DUTIES OF THE PARTIES: To achieve the goals of this MOU, Parties hereby agree that:
 - a. SJPC and NJEDA will each commit a maximum-not-to-exceed amount of \$150,000 for the exclusive purpose of completing the Study;
 - b. SJPC will procure a qualified entity through a competitive process consistent with its procurement guidelines, with SJPC and NJEDA jointly developing a scope of work, identifying a competitive pool of prequalified bidders and evaluating proposals received using agreed price and non-price criteria; and
 - c. SJPC and NJEDA will jointly direct the work of the appointed contractor, including providing inputs and reviewing draft and a final report.
2. FUNDING MECHANISM: SJPC will directly contract with the selected contractor and will, upon receipt of invoices from said contractor, forward invoices to NJEDA alongside a request for payment for NJEDA's share of costs, with NJEDA's total obligation to SJPC not-to-exceed \$150,000. NJEDA will make payment directly to SJPC within 30 business days of receipt of a request for payment.
3. TERM: This MOU shall become effective on the date it is fully executed by both Parties and shall continue for a period of two (2) years. This MOU may be extended only by prior written agreement by the Parties.
4. CONFIDENTIALITY: Subject to the N.J. Open Public Records Act, New Jersey Right to Know statutory law or case law, oral questions administered under oath

in a court or investigative proceeding, interrogatories, depositions, subpoena or other judicial or investigative process, Parties agree that the Study, including primary inputs or other underpinning research, preliminary drafts and final report are confidential and will not be disclosed to third parties, except as mutually agreed upon by both parties; provided that Parties may disclose information to other offices, agencies, authorities, or departments of the State of New Jersey.

5. INTELLECTUAL PROPERTY: Parties agree that the final report will be issued to SJPC and NJEDA, in order that both Parties enjoy the rights, including intellectual property rights, to rely upon, use and disseminate the Study, with dissemination to third-parties subject to the Confidentiality provisions outlined in Section 4 above.
6. THIRD PARTY BENEFICIARIES & ASSIGNMENT: This Agreement shall not be construed to create any rights on behalf of any party other than the SJPC and NJEDA. Neither this Agreement nor any rights or duties may be assigned or delegated by either party hereto without the written consent of the other party and any such purported assignment or delegation shall be null and void and of no force or effect.
7. AMENDMENT: This MOU may be amended, supplemented, changed, modified or altered only by mutual agreement of the Parties in writing.
8. TERMINATION: Either party may terminate this MOU upon service on the party of written notice giving at least 90 days written notice of such intention to terminate. In the event of termination, the Parties agreed to conduct a final accounting within 90 days of the termination effective date.
9. NOTICE: All correspondence and notices to NJEDA regarding this MOU shall be addressed to the following person or his/her delegate or replacement:

Jonathan Kennedy
Managing Director – Infrastructure
NJEDA
P.O. Box 990
Trenton, NJ 08625
jkennedey@njeda.com

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

Brendan Dugan
Assistant Executive Director/Director of Business Development
South Jersey Port Corporation
101 Joseph A. Balzano Boulevard
Camden, New Jersey 08103
bdugan@southjerseyport.com

10. This MOU is being entered into for the sole purpose of evidencing the mutual understanding and intention of the Parties.
11. 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 WHEREOF, the Parties have caused this MOU to be signed by their duly authorized Representatives or designees to be hereunto affixed the day, month and year first written Above.

For the South Jersey Port Corporation:

For the NJEDA

Andrew Saporito
Executive Director/CEO

Brian Sabina
Chief Economic Growth Officer

DATE

DATE



MEMORANDUM

TO: Members of the Authority
FROM: Tim Sullivan, Chief Executive Officer
DATE: April 14, 2021
Subject: Amendment to Contract with Coalition for Green Capital for Consulting Services

Request

Members of the Board are asked to approve an expansion of the Authority's existing contract with the Coalition for Green Capital (CGC) to provide consulting services to the newly established New Jersey Council on the Green Economy (the Council) for work defined in Governor Murphy's Executive Order No. 221, including conducting a Green Economy analysis, gathering stakeholder input, and delivering an advisory report to the Governor for a firm-fixed price of \$680,000.

Background

Staff propose the expansion of the existing contract the Authority has with CGC. The contract was procured through a publicly advertised Request for Qualifications/Proposals, which was posted on September 1, 2020. After an evaluation process, staff recommended the contract be awarded to CGC and the Board approved on November 13, 2020. The contract was signed on December 8, 2020 and requires CGC to provide consulting services to support the design and implementation of a statewide green financing mechanism (the New Jersey Green Fund or the Fund). As approved by the Board in November 2020, the total approved value of the current contract is \$700,000, including a firm-fixed price of \$300,000 for Phase 1 (design) deliverables and \$400,000 for task-order based requests to support Phase 2 (implementation) utilizing a fixed rate card. Refer to Appendix A for the details of the existing contract. The initial term of the existing contract is one (1) year, with the option of one (1), six (6)-month extension. Funding for the existing contract will be drawn wholly from Regional Greenhouse Gas Initiative (RGGI) funds, which are allocated to the Authority annually under the Global Warming Solutions Fund Act.

New Jersey Council on the Green Economy

In February 2021 Governor Phil Murphy’s Executive Order #221 established the Office of Climate Action and the Green Economy (“Climate Office”), which shall coordinate the policymaking processes of Executive Branch departments and agencies with respect to all climate change and green economy issues, coordinate climate policy and green economy advice to the Governor, ensure that climate and green economy policy decisions and programs are consistent with the Governor’s stated goals and that those goals are being effectively pursued, and monitor implementation of the Governor’s climate policy and green economic agenda. The Climate Office will be a key stakeholder in the development of the New Jersey Green Fund, the scope of the original CGC contract, and the Green Fund will need to be developed in concert with the other policies developed by the Climate Office.

Executive Order #221 also established the New Jersey Council on the Green Economy (“Council”) within the Climate Office, and under the auspices of the Governor’s Jobs and Economic Opportunity Council (previously established by Executive Order #12). The Council’s role is to develop a blueprint to expand the green economy and help build a diverse workforce to support the Administration’s clean energy and climate goals. The Authority’s Chief Executive Officer, Tim Sullivan, sits on the Council and is also Co-Chair of the Jobs and Economic Opportunity Council (JEOC); the Council is a subset of JEOC. Authority staff member – Pallavi Madakasira, Director, Clean Energy Products – will help the Governor’s Office and provide staff support to the Council. Council members will offer their input, expertise and time and are not compensated for their role on the Council.

Alignment between the Original Scope of Work and the Proposed Contract Amendment

As stated in the original procurement for the Green Fund, the primary objective of the Fund is to assist in the mobilization of private capital to finance the deployment of commercially proven clean energy technologies by the State’s businesses, including for energy efficiency measures and renewable power generation projects. In addition, the Authority is considering a wide range of approaches to the establishment and operation of a the Fund, provided that the approach selected meets the core requirements of rapidly reducing New Jersey’s carbon footprint and the emission of harmful pollutants into the State’s air and water; and providing direct economic benefits to the citizens of New Jersey, with a focus on environmental justice communities, including, but not limited to increasing job creation and local investment and the lowering of energy costs.

Given the recent announcement of EO 221, it is now clear that the efforts of the Green Fund will need to be aligned with the policy direction of the Council and the Climate Office.

The existing Green Fund contract is comprised of two phases: (i) Phase 1, which will focus on the design and launch planning for the Fund; and (ii) Phase 2, which will focus on implementation of the Fund design and launch plan. Phase 1 of this work involves analyzing the history of green projects in the State and what would be necessary to expand them, engagement with the following list key stakeholders in order to conduct a market gap analysis, identify and assess potential funding sources to capitalize and develop a set of recommendations for programs to be offered by the Green Fund:

- Policymakers and key program managers at the various government agencies
- Environmental justice organizations
- Clean energy project developers and contractors in the State
- Clean energy lenders

- Energy utilities
- Clean energy businesses and technology companies
- Private sector investors in clean energy
- Vehicle fleet owners

The original contract permits the Authority to obtain additional related consulting services for Phase I or consulting services for Phase II on a requirements basis, per the hourly rates provided on the Fee Schedule. Additionally, the contract contains an additional services provision, which provides “During the term of the Contract, the Authority may possibly request additional consulting services from the Contractor on a requirement basis.”

The work performed under the original contract will dovetail with the work required in connection with the Council’s charge under EO 221. A detailed understanding of the State’s clean energy landscape of what is, and how it can be expanded will inform the work for the next phase where the Council will be looking to broadly define green jobs, which necessarily requires an understanding of clean energy/green projects and the industry. While the existing contract for the Authority concerns building a financial Fund, the work performed and the understanding developed from that work will give CGC the ability to deliver on the additional scope of work with significant cost savings and informational synergies for the Authority and the State because:

- a) There is a significant overlap in the types of stakeholders and the engagement process to support the deliverables listed in Phase 1 of the existing contract with CGC and the stakeholder engagement needed for the Council (see “Procurement Objectives and Deliverables” below);
- b) The types of questions that need to be asked of these stakeholders also overlaps considerably, leading to more consistent and comprehensive answers when done at the same time;
- c) Coordinating these two efforts will reduce stakeholder fatigue and results in better input across the two scopes;
- d) The analysis done across the two projects will be complementary and support the finding from both efforts; and
- e) The Green Fund work will need to utilize and conform to the outputs of the Council work – finance projects that enable sustainable economic growth and development, accelerate the growth of green jobs and prioritize environmental and economic justice – in order to get support from the Administration to move forward and to be aligned with the State’s broader Green Economy and Jobs Strategy.

In accordance with the existing contract, staff requested and CGC provided a proposal to complete this additional work. NJEDA’s enabling act makes it clear that one of the Authority’s missions is to protect and enhance the State’s natural environment. N.J.S.A. 34:1B-2(a) recognizes that “there is an urgent need to protect and enhance the quality of the natural environment and to reduce, abate and prevent environmental pollution derived from operation of the industry, utilities and commerce within the State. CGC proposes to deliver the Council work in collaboration with two partner subcontractors – Gabel Associates and BW Research Partnership (collectively the “Project Team”). Gabel is an energy, environmental and public utility consulting firm, with decades of experience in New Jersey. BW Research is a full-service applied research firm that provides economic & workforce research, including clean energy jobs surveying and workforce gaps assessments in several neighboring states to NJ. While CGC will lead the scope of work in Parts 1, 2 and 4 (see below), Gabel and BW will collaborate on Part 3 (see below). The Project Team

will support the Council’s delivery of the required advisory report to the Governor, which will lay out a pathway for:

- A rapid transition to clean energy sources to reduce GHG emissions;
- Creation of thousands of new, good-paying jobs to support the necessary investment, technology, deployment, and construction of a new clean economy;
- Ensuring that historically underserved communities receive a proportionate share of the benefits of this transition, which include lower energy costs, more efficient homes, improved health from lower air pollution, access to job and new wealth formation opportunities; and
- Assisting workers in legacy energy industries transition to new careers in the green economy.

Contract Amendment Procurement Objectives & Deliverables

The proposed scope of the contract amendment with the Coalition for Green Capital is comprised of four parts:

- Part 1 – Council Support – The Project Team will produce essential research and background materials, and regularly seek direct input from individual Council members. The Team will also present the final advisory report for feedback and final approval from the Council. Specific tasks include:
 - Strategic goal definition setting – EO 221 requires the Council to “develop a more expansive and inclusive definition of a “green job” that includes the full variety of green infrastructure jobs.” The Project Team will guide the Council through the process of developing this definition based upon the stated goals of the Governor, the input of stakeholders, and precedents seen in other jurisdictions.
 - Council preparation & regular reporting – Council members will all come to the process with different levels of expertise and familiarity with the policy and green economy conditions in New Jersey. The Project Team will produce background materials, one-pagers, and summary analyses early in the process to help Council members establish a shared baseline understanding of the situation and the mandate of the Council so productive work can follow. The Project Team will also regularly produce reports that synthesize the findings of the project to date, so the Council can provide strategic direction to the project.
 - Direct engagement – The Project Team will directly engage with Council members one-on-one or in small groups to solicit input for the work product and ensure buy-in to the process. Council members will also be critical to guiding the strategic stakeholder engagement.
- Part 2 – Stakeholder Engagement – The work to be produced by the Council needs to take into account the needs and input of a wide set of stakeholders. The Project Team will work with the Council to map the stakeholder landscape, identify specific individuals to interview and/or meet with groups, conduct interviews, and gather and synthesize the findings from this outreach. Expected target groups for outreach include:

- Labor organizations for clean energy and fossil fuel energy industries, among others
 - Environmental justice organizations
 - Job training program managers
 - Clean energy technology and manufacturing firms
 - Clean energy project developers and contractors
 - Energy utilities
 - Environmental advocacy organizations
 - Investors, lenders, and other private sector capital providers
 - Energy service companies
 - Policymakers, state agencies, and other government officials
- Part 3 – Research & Analysis – The Project Team will produce research and analysis for the Council, taking into account the findings of the stakeholder engagement process, that evaluates the current conditions and needs of the State’s green economy. This work includes mapping government agencies and their relevant role to the climate transition and a coordinated policy assessment. This also includes defining and counting green jobs in the state, evaluating job creation opportunities and economic impacts, assessing workforce training needs, and mapping a pathway to a just transition delivers good, high-paying jobs in NJ. And finally, the work will include careful assessment of the investment and job creation pathway to ensure the state’s policies deliver on environmental justice needs, and create a diverse workforce open to all New Jerseyans.
 - Part 4 - Implementation Pathway Development – The Project Team will deliver a final report to the Council that incorporates Council guidance and direct input, stakeholder input, and the outcomes the Project Team’s research and analysis. The report will provide pathways to optimize the myriad of clean energy and green economy policies, and make recommendations related to job training, re-training and other worker-oriented programs so the state can create the jobs it needs to meet its clean energy goals, and do so with a diverse and well-paid workforce. This will include both general goals and recommendations to guide the direction of future policy and initiatives, as well as specific details and recommendations such as funding levels, incentives and other state actions and approaches required to reach the stated outcomes.

If the Board approves the amendment, the consultant is anticipated to begin work in April 2021. CGC proposes that the Project Team will deliver this additional scope of work for a budget of \$680,000, based upon the rates provided in the original contract, with work to be completed no later than February 16, 2022 (prior to the end of the option period under the original contract).

This expansion of the existing contract will initially be funded by the Authority via RGGI proceeds, with an anticipated \$500,000 of funding reimbursement, subject to appropriation, in the Governor’s proposed Fiscal 2022 budget.

Recommendation

Members of the Board are asked to approve an expansion of the Authority's existing contract with the Coalition for Green Capital to provide consulting services to the newly established New Jersey Council on the Green Economy for work defined in Governor Murphy's Executive Order No. 221, including conducting a Green Economy analysis, gathering stakeholder input, and delivering an advisory report to the Governor for a firm-fixed price of \$680,000.

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

Timothy Sullivan
Chief Executive Officer

Prepared by: Pallavi Madakasira



Appendix A

MEMORANDUM

TO: Members of the Authority
FROM: Tim Sullivan, Chief Executive Officer
DATE: November 13, 2020
Subject: Consulting Services for Creation of the New Jersey Green Fund

Request

Members of the Board are asked to approve:

- i. The Authority entering a contract with the Coalition for Green Capital (CGC), a non-profit organization with offices in Washington, D.C. and New York City, to provide consulting services to support the design and implementation of a statewide green financing mechanism (the New Jersey Green Fund, or the Fund).; and
- ii. A not-to-exceed project budget of \$700,000 for the work to be performed under the contract. The amount includes a firm-fixed price of \$300,000 for a specifically identified set of deliverables during Phase 1 of the contract. It also includes up to \$400,000 for any and all work that we may request CGC to undertake during Phase 2 (implementation), together with any additional work we may request with respect to Phase 1. In all cases these work requests would be triggered via task orders utilizing a fixed rate card.

The initial term of the contract is one (1) year, with the option of one (1), six (6)-month extension. Funding for the contract will be drawn wholly from Regional Greenhouse Gas Initiative (RGGI) funds, which are allocated to the Authority annually under the Global Warming Solutions Fund Act.

Contractor selection was based on a publicly advertised procurement that resulted in three (3) proposals being scored by an Evaluation Committee according to technical criteria (Personnel, Experience of the Entity, and Technical Proposal) and the fixed-rate price, which is ranked in order from highest to lowest by IPM Procurement.



Background: Regional Greenhouse Gas Initiative (RGGI) and the creation of a New Jersey Green Fund

On January 29, 2018, Governor Murphy signed Executive Order 7 (EO 7), instructing state government agencies to return New Jersey to full participation in the Regional Greenhouse Gas Initiative (RGGI) as quickly as possible.¹ RGGI is a multi-state, market-based program that establishes a regional cap on carbon dioxide (CO₂) emissions from the electric power generation sector allowing for auctioning of emissions rights.

Based on its participation in the quarterly RGGI auctions, New Jersey plans to invest an estimated \$80 million each year in programs that reduce GHG, drive forward projects that boost clean energy and create jobs, protect the health of residents in environmental justice communities, and increase the resiliency of coastal communities. New Jersey's proceeds from the three (3) RGGI auctions held thus far in 2020 total approximately \$66 million, with full calendar-year proceeds estimated in the range of \$80 million.

RGGI funds allocation is governed by the Global Warming Solutions Fund Act (P.L. 2008, c. 340). By law, three state agencies (NJEDA, the New Jersey Department of Environmental Protection (NJDEP), and the New Jersey Board of Public Utilities (NJBPUB)) are allocated RGGI proceeds, with NJEDA receiving 60 percent (focus area: commercial, institutional, and industrial entities), and NJBPUB and DEP each receiving 20 percent (focus areas, respectively: low income and moderate income residential; and local government, forest, and tidal marshes).

Background: Stimulating the flow of private lending to support clean energy deployment and the New Jersey economy

NJEDA is open to considering a wide range of approaches to the establishment and operation of a Green Fund, provided that the approach selected meets the core requirements of stimulating and leveraging private sector investment in clean energy; rapidly reducing New Jersey's carbon footprint and the emission of harmful pollutants into the State's air and water; and providing direct economic benefits to the citizens of New Jersey, with a focus on environmental justice communities, including, but not limited to increasing job creation and local investment and the lowering of energy costs.

In light of the challenging fiscal situation caused by the COVID-19 pandemic, several objectives for the Green Fund's design and implementation have become even more critical in recent months. For example, the Authority will prioritize products that can be launched and experience strong uptake quickly, and can make a rapid, positive impact on job creation, investment and economic productivity in the state. To the extent feasible, it will seek to build upon existing offerings of other state agencies as well as programs that have already been deployed by green finance institutions in other states and localities.

¹ Executive Order 7 (EO 7) is available at: <https://nj.gov/infobank/eo/056murphy/pdf/EO-7.pdf>



Procurement Objectives & Deliverables

The proposed contract with the Coalition for Green Capital is comprised of two phases:

(i) During Phases 1A and 1B, which, together, will focus on the design and launch planning for the Green Fund, fixed deliverables shall be provided by CGC in exchange for a firm, fixed price amount of \$300,000. Phases 1A and 1B include the option of additional task orders with compensation to be determined based upon hourly rates.

(ii) During Phase 2, which will focus on implementation of the Green Fund design and launch plan determined during Phases 1A and 1B, any work to be performed under the contract will be based upon specific task orders, also with compensation to be determined based upon hourly rates provided in the Fee Schedule.

Through this contractual engagement, NJEDA is seeking to draw on outside, specialized expertise and US and global best practice for the purposes of the design, launch planning and implementation of the New Jersey Green Fund. More specifically, the consultant will:

During Phase 1A: Assess existing NJ clean energy financial support programs and conduct a market gap analysis; engage with clean energy and energy finance stakeholders, identify and assess potential funding sources to capitalize, as of launch and over the near-and long-term, the Fund; and evaluate potential combinations of legal-organizational and governance structures for the Fund and develop a preliminary recommendation on approach.

During Phase 1B: Finalize recommendations with regard to the Fund's organizational form, governance arrangements and capitalization strategy; develop a set of recommendations for programs and products to be offered by the Green Fund; prepare initial draft one-year and three-year business plans for Fund, together with pro forma financials; and prepare one or more pitch packs for use during a road show to be undertaken during Phase 2.

During Phase 2: Provide support for the launch plan developed during Phases 1A and 1B, if and when requested.

The not-to-exceed budget of \$700,00 that Staff is requesting for the overall funding of the project consists of (i) \$300,000 for the fixed deliverables during Phases 1A and 1B, and (ii) up to an additional \$400,000 to cover the cost of work that may be undertaken by CGC pursuant to specific task order requests during those Phases, or during Phase 2. As noted above, for Phase 2 fixed deliverables have not been defined yet, however examples of work could include: road show planning, drafting of the forms of documents used in the administration of a program, or advisory support in discussions with potential funding sources and strategic partners. Any work



performed by CGC pursuant to task order requests during the engagement would be at hourly rates no higher than what CGC proposed in its bid.

CGC's proposal contemplates that they will engage a subcontractor, the New York City Energy Efficiency Corporation (NYCEEC), to assist CGC in its completion of the Scope of Work, principally in regard to Phase 1B and Phase 2. NYCEEC is an independent, not-for-profit corporation based in New York City that has operated as an energy efficiency and renewable energy lender for approximately 10 years. Although its principal lending activities to date have focused on New York City, it also operates elsewhere in New York State as well as in other states in the region, and the District of Columbia.

Staff has consulted with the New Jersey Board of Public Utilities, the New Jersey Department of Environmental Protection and the New Jersey Infrastructure Bank in shaping the scope of this engagement, and plans to collaborate with these parties, as well as other New Jersey government agencies, on the design, planning and implementation of the Green Fund. In addition, earlier in the year, the Authority issued a Request for Information (RFI) to the public regarding the potential creation of a New Jersey Green Fund. Findings from the approximately two dozen parties who responded to the RFI informed the preparation of the RFQ/P and will be fed into the work of the consultant and the program design and planning process.

The consultant is anticipated to begin work in early December 2020, with the various written deliverables to be provided at agreed milestones over a 9-to-11-month period. The Authority will use these deliverables, together with its continuing engagement with governmental and public stakeholders, community, and other stakeholders, to design the Green Fund and plan its launch, including its initial set of proposed programs. Staff expects that any programs that are recommended would require separate approval by the Board prior to launch.

Procurement Process Utilized

Authority Staff are procuring services in accordance with public procurement laws and requirements and have followed the Authority's publicly advertised process.

The RFQ/P was posted publicly on September 1, 2020. It was advertised in three (3) newspapers – Courier Post, Trenton Times, and Star Ledger – for two (2) days, posted on the NJ State Business Portal, and posted on the Authority's website, and made available for more than ten (10) days for bidder submissions. An optional proposal conference was held telephonically on September 9, 2020, and a question period was open until September 14, 2020. NJEDA responses to all questions were shared in Addendum 1 to the RFP, posted on the Authority's website on September 17, 2020.



Prior to the publishing of the RFQ/P, an Evaluation Committee was established comprised of qualified Authority staff. Further, as part of its due diligence in its evaluation process, the Authority consulted with Subject Matter Experts from elsewhere in New Jersey State government. These Subject Matter Experts were non-voting members of the Evaluation Committee.

Bids closed on October 5, 2020, and the Committee formally convened for the first time on October 7, 2020 to review the evaluation criteria and scoring timelines. They reconvened on October 14, 2020 to discuss the strengths and weaknesses of the proposals and requested that IPM Procurement check references for and seek clarifications from the Coalition for Green Capital. Once the information was received and communicated, the Committee members submitted independently scored proposals for three of the four scoring categories, Personnel, Experience of the Entity and Technical Proposal. IPM Procurement independently ranked and scored the fourth category, fixed-rate price from highest to lowest. Hourly rates were submitted for any additional work that may be required in the future, but weren't used in evaluating price. Weights were assigned to each scoring category prior to the bid opening date and time, but weren't revealed in the RFQ/P.

The four scoring categories and their respective assigned percentage scoring weights, were as follows

- Personnel's individual relevant qualifications for team roles and the Scope (20%);
- Experience of entity, demonstrated through reference projects of similar size and scope to the RFQ/P Scope (20%); and
- Ability to complete the Scope of Work based on the proposer's Technical Proposal (40%).
- Pricing (20%)

Procurement Process Results and Justification for Award Recommendation

Three (3) vendors submitted proposals by the October 5, 2020 deadline, with all deemed responsive by the Sr. Procurement Officer. The vendors who submitted Proposals were as follows:

- Guidehouse, Inc.
- McKinsey & Company
- Coalition for Green Capital

Based on the independent scoring by Evaluation Committee members, the Coalition for Green Capital was the highest ranked proposal, based on Personnel, Experience of Entity, and Technical Proposal, and inclusive of the results of the sealed Fee Schedule ranking. The total scores for the vendors are as follows (out of a maximum score of 5):



- Guidehouse, Inc. – 3.0
- McKinsey & Company– 2.85
- Coalition for Green Capital – 4.75

Recommendation

Members of the Board are asked to approve the Authority entering a contract with the Coalition for Green Capital to provide consulting services to the Authority in connection with the design, launch planning and implementation of the New Jersey Green Fund, and a not-to-exceed project budget of \$700,000.

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

Tim Sullivan, CEO

Prepared by: Office of Economic Transformation (OET)

OFFICE OF ECONOMIC GROWTH

**TECHNOLOGY BUSINESS TAX CERTIFICATE
TRANSFER PROGRAM**



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: April 14, 2021

SUBJECT: Technology Business Tax Certificate Transfer (NOL) Program:
2021 Program – COVID-19 Modification – Notice of Rule Modification –

REQUEST

The Members are requested to approve a modification of the rules pursuant to Executive Order 103 (Murphy 2020) (“EO 103”) for the Technology Business Tax Certificate Transfer (NOL) Program. The modification revises the requirement for an employee to spend 80 percent of his or her time in New Jersey to reflect Executive Order 107 (Murphy 2020) (“EO 107”).

Please note this requested change is being presented to the Authority’s board prior to the program application deadline of June 30, 2021 to provide notice of this change to all potential applicants prior to program application deadline. This request mirrors the request made for the 2020 NOL Program year with an update for the 2021 program timing

OVERVIEW

On March 9, 2020, Governor Phil Murphy issued EO 103, declaring a State of Emergency and a Public Health Emergency to ramp up New Jersey’s efforts to contain the spread of COVID-19. Section 6 of EO 103 authorizes agencies to waive, suspend, modify any existing rule, where the enforcement of the rule would be detrimental to the public welfare during the emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the contrary.

On March 21, 2020, Governor Murphy issued EO 107, generally announcing a statewide stay at home order and closure on all non-essential retail business, requiring all employers to offer work-from-home wherever practicable, and directing all residents to abide by social distancing practices (“EO 107 Measures”). Subsequent containment measures were announced, and many organizations continue to work from home well into 2021.

BACKGROUND- Employment

The (NOL) Program allows technology and biotechnology companies with fewer than 225 employees in the U.S. and with certain minimum number of full-time employees in the State to sell their net operating losses and/or research and development tax credits to profitable corporate entities. This is an annual program with employment verification at both the date of application 6/30, and the date of closing, which occurs during a 5-month timeframe from December through April or the later of the NJ state tax filing deadline

A modification is necessary to reflect the Governor's EO 103 declaring a public health emergency and EO 107, requiring employees to shelter at home to contain the spread of the virus. Per the program legislation, to be considered an employee for the program, an employees must satisfy the definition of "full-time employee," which generally means a person working for at least 35 hours a week (or other standard of service generally accepted by custom or practice as determined by EDA) and whose wages or income is subject to payment of estimated taxes according to the New Jersey Gross Income Tax Act. Additionally, the full-time employee must be "working in this State."

The program rules define a "full-time employee working in this State" as:

a full-time employee whose primary office is in New Jersey and who spends at least 80 percent of his or her time in New Jersey, or who spends any other period of time generally accepted by custom or practice as full-time employment in New Jersey, as determined by the Authority.

Historically when reviewing program applications, Authority Staff have only counted those employees who can demonstrate evidence of meeting the requirement of spending "80 percent of his or her [work] time in New Jersey". Pennsylvania residents have never been counted, as the PA/NJ Reciprocal Income Tax Agreement prohibits them from meeting "whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1".

With the onset of COVID-19 and in compliance with the EO 107 Measures, many employees who would be going into their respective New Jersey offices have been working from home. Thus, for the 2021 Program year, and consistent with emergency rule modifications for the Grow NJ and HUB programs, Authority Staff recommends a rule modification that recognizes that but for the COVID-19 pandemic and the EO 107 Measures, EDA would have counted certain out-of-State residents as eligible employees. This can be demonstrated through past evidence that the employee commuted to a New Jersey workplace and that the employee resides in the same location and reports to the same office, or through evidence that the employees (excluding Pennsylvania residents due to the tax agreement) live within reasonable proximity of New Jersey as defined by a 90 minute commutable distance to their assigned NJ office. The proposed modification surrounding employment eligibility impacted the 2020 NOL program and will also impact the 2021 program. Eligibility as outlined herein does not impact or effect any ruling, decision, or determination from taxation regarding place of employment and applicable tax rates.

The attached proposed form of Notice of Rule Waiver/Modification/Suspension required by EO 103 also contains the specific rule modification to N.J.A.C. 19:31-12.2. Staff recommends that this rule modification be in effect through the closing of the 2021 program year, which is the later of April 15, 2022 or the 2022 NJ state tax filing deadline.

RECOMMENDATION:

Staff recommends a rule modification pursuant to Executive Order 103 (Murphy 2020) (“EO 103”) for the Technology Business Tax Certificate Transfer (NOL) Program. Consistent with Executive Order 107 (Murphy 2020) (“EO 107”), the requirement for a full-time employee to work “*80 percent of his or her time in New Jersey*” is modified to accept documentation that the employee would have worked in NJ but for the COVID-19 pandemic and the mitigation measures required in the EO 107.

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

Tim Sullivan, CEO

Prepared by: Matthew Fields

STATE OF NEW JERSEY
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
NOTICE OF RULE WAIVER/MODIFICATION/SUSPENSION
PURSUANT TO EXECUTIVE ORDER NO. 103 (MURPHY)(MARCH 9, 2020)
COVID-19 STATE OF EMERGENCY

Temporary Rule Modification adopted by the Members of the New Jersey Economic Development Authority

Date: April 14, 2021

Authority: N.J.S.A. App.A:9-45 & App. A:9-47; Executive Order No. 103 (Murphy)(“EO 103”)

Effective Date: 4/14/2021

Expiration Date:

- Modification to N.J.A.C. 19:31-12.2: - Through the closing of the 2021 program year by the later of April 15, 2022 or the 2022 NJ state tax filing deadline.

This is an emergency adoption of a temporary rule modification of the Technology Business Tax Certificate Transfer (NOL) Program rules at N.J.A.C. 19:31-12.2 Section 6 of EO 103, issued in response to the COVID-19 pandemic, authorizes agency heads to waive/suspend/modify any existing rule, where the enforcement of the rule would be detrimental to the public welfare during the emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the contrary. Pursuant to that authority, and with the approval of the Governor and in consultation with the State Director of Emergency Management and the Commissioner of the Department of Health, the New Jersey Economic Development Authority (NJEDA) is modifying its rules as follows:

The EDA is modifying the NOL Program rule that requires a full-time employee to spend “80 percent of his or her time in New Jersey” to reflect that certain out-of-State residents can no longer work in New Jersey offices due to the containment measures required by Executive Order 103 (202), which generally required employees to shelter at home to contain the spread of the virus. The rule modification allows a full-time employee to count toward the NOL Program requirement if the applicant documents that the applicant could not continue regular office employment so as to comply with restrictions required by the Governor.

Full Text of the proposed modifications follows

19:31-12.2 Definitions

...
“Full-time employee working in this State” means a full-time employee whose primary office is in New Jersey and who spends at least 80 percent of his or her time in New Jersey, [or] who spends any other period of time generally accepted by custom or practice as full-time employment in New Jersey, as determined by the Authority, **or for whom the applicant demonstrates to the Authority’s satisfaction that the applicant is unable to continue regular employment to comply with any restrictions ordered by the Governor during a period of emergency declared by the Governor.**

...

Date



Tim Sullivan

BOND PROJECTS

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Stand-Alone Bond

APPLICANT: Linden Renewable Energy, LLC

PROD-00228622

PROJECT USER(S): Same as applicant

PROJECT LOCATION: 4900 Tremley Point Road Linden City Union

APPLICANT BACKGROUND:

Linden Renewable Energy, LLC, established in 2019, will be an organic waste anaerobic digester (AD) facility which will use food waste and other processed organic material to produce Renewable Natural Gas (RNG) and commercial grade digested solids, similar to peat moss/finished compost, for use as a soil amendment.

Linden Renewable Energy, LLC is a wholly owned subsidiary of RNG Energy Solutions, LLC. RNG Energy Solutions, LLC (RNG) develops, finances, owns and manages the operations of state-of-the-art anaerobic digester projects that produce renewable natural gas. As the successor company to AgEnergy USA, RNG brings three decades of conventional and alternative energy development experience in the agricultural, urban and industrial environments. Most notably, AgEnergy USA completed the development of the Heartland Renewable Energy project, which is the largest codigestion anaerobic digester project in the world.

Anaerobic digestion is a sequence of processes by which microorganisms break down biodegradable material in the absence of oxygen. The process is used to manage waste or to produce fuels.

RNG is concluding negotiations with Starwood Energy Group Global, L.L.C. regarding providing equity to Linden Renewable Energy, LLC to pay a portion of the costs of the facility. As a result of its investment, Starwood would acquire a significant ownership position in Linden Renewable Energy, LLC.

This project qualifies as an Exempt Public Facility- solid waste disposal facilities, under Section 142(a)(6) of the IRS Code and therefore is exempt from the \$20 million capital expenditure limitation under Section 144 of the Code.

OTHER NJEDA SERVICES:

None

APPROVAL REQUEST:

Authority assistance will enable the Applicant to construct and equip an organic waste anaerobic digester (AD) facility, fund a debt service reserve fund and pay interest on the bonds during the construction. Proceeds of the bonds will also pay the cost of issuance.

This project is being presented for final approval.

FINANCING SUMMARY:

BOND PURCHASER: Citigroup Global Markets Inc. (Limited Public Offering)
AMOUNT OF BOND: Not to exceed \$195,000,000 Tax-Exempt.
TERMS OF BOND: Not to exceed 30 years; Fixed interest not to exceed 10.00%.
ENHANCEMENT: N/A

ESTIMATED PRODUCT COSTS:

Construction of New Building or Addition	\$133,423,200.00	Debt Service Reserve Fund	\$11,595,824.00
Engineering & Architectural Fees	\$1,700,000.00	Interest During Construction	\$13,995,375.00
Finance Fees	\$4,165,275.00		
Legal Fees	\$1,700,000.00		
New Equipment	\$75,000,000.00		

TOTAL COSTS: \$241,579,674.00

JOBS:

NJ Full Time Jobs at Application	Expected New Full Time Eligible Jobs at Project Site	Full Time Maintained Jobs at Project Site	Estimated Construction Jobs
0	23	0	450

PUBLIC HEARING: 4/14/2021

BOND COUNSEL: McCarter & English, LLP

DEVELOPMENT OFFICER: Monika Athwal

UNDERWRITER OFFICER: Steven Novak

LOANS/GRANTS/GUARANTEES

LOAN TO LENDER PROGRAM

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**CDFI Loan To Lender****APPLICANT:** NYBDC Local Development Corporation

PROD-00188337

PROJECT USER(S): Same as applicant**PROJECT LOCATION:** 11 East Oak Street Oakland Borough Bergen County**APPLICANT BACKGROUND:**

NYBDC LDC provides responsible financial products and business advisory services to small businesses that cannot obtain conventional financing, with a focus on minority and woman owned business, veteran-owned, low income and other underserved small businesses. NYBDC LDC is a mission-driven, not-for-profit 501(c) 3 certified by the US Department of Treasury as a CDFI. NYBDC LDC is the CDFI affiliate of New York Business Development Corporation (NYBDC) and The 504 Company. All three affiliates now operate with the name Pursuit Community Finance. NYBDC LDC has over a decade of experience providing technical and financial assistance to minority, woman owned businesses and small businesses. Its mission is to help small businesses grow by providing small business loans and advisory services.

NYBDC LDC will use the loan proceeds to capitalize a separate account that will be used as a funding source of their existing loan programs.

OTHER NJEDA SERVICES:

None

APPROVAL REQUEST:

\$1,500,000 loan under the Loan to Lender program

FINANCING SUMMARY:**LENDER:** NJEDA**AMOUNT OF LOAN:** \$1,500,000

TERMS OF LOAN: 20-Year Term. One third to be advanced at closing and the remaining amount to be disbursed as two additional tranches once 75% of the previous tranche is committed. Deployment period of the loan limited to two years post-closing.

During the two-year loan deployment period, no interest or principal payments are due, followed by an interest only period from years three through seven at a fixed rate of 2.00%, followed by quarterly principal and interest payments from years eight through 20 in an amount to fully amortize the outstanding principal balance. The interest rate during the amortization period will be fixed at 2.00%.

PRODUCT COSTS:

Finance Fees	\$27,250.00	Capitalization of Revolving Loan Fund	\$1,500,000.00
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TOTAL COSTS:	\$1,527,250.00
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JOBS:

NJ Full Time Jobs at Application	Expected New Full Time Eligible Jobs at Project Site	Full Time Maintained Jobs at Project Site	Estimated Construction Jobs
0	0	0	0

DEVELOPMENT OFFICER: Kenneth Hart**UNDERWRITER OFFICER:** Matthew Boyle

PREMIER LENDER PROGRAM (PLP)

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Statewide Loan Pool

APPLICANT: 311 MLK Drive, LLC

PROD-00228652

PROJECT USER(S): Rising Tide Capital, Inc.

PROJECT LOCATION: 311-315 Martin Luther King Drive Jersey City Hudson

APPLICANT BACKGROUND:

311 MLK Drive, LLC is a subsidiary of Rising Tide Capital ("RTC") formed to acquire land and building in Jersey City, NJ.

RTC is a non-profit organization founded in May 26, 2004. RTC provides business development services designed to help individuals start and grow successful businesses; build communities through collaborations with other non-profits, higher education institutions, corporations, and public agencies; and create a scalable program model with measurable impact which can be replicated in communities of need across the U.S. RTC has grown from a local neighborhood organization working with 15 entrepreneurs per year, into an institution which now serves more than 1,000 entrepreneurs per year in both English and Spanish.

Approval is requested for a \$1,550,000 loan to 311 MLK Drive, LLC ("MLK") under the Premier Lending Program. Loan proceeds will be used as a portion of the permanent financing for the purchase of land, building, renovations and soft costs at 311-315 Martin Luther King Drive in Jersey City. The building contains 23,326 gross square feet and approximately 17,734 square feet of rentable space. The building has four floors with floors two and three consisting of ten, two-bedroom/one bath affordable apartments while floors one and four contain commercial space. The commercial space accounts for approximately 50% of the total rentable space and will be occupied by RTC which is related to the project applicant. On March 20, 2019 this property was acquired by MLK funded by a \$1.5 million loan from the New Jersey Redevelopment Authority.

OTHER NJEDA SERVICES:

None

APPROVAL REQUEST:

Approval of a 50% (\$1,550,000) Authority Participation in the \$3,100,000 Valley National Bank loan under the Premier Lending Program is recommended.

FINANCING SUMMARY:

LENDER:	Valley National Bank		
AMOUNT OF LOAN:	\$3,100,000 bank loan with a 50% (\$1,550,000) Authority participation.		
TERMS OF LOAN:	Fixed for ten years 15 days from conversion to permanent at weekly yield on the ten-year US Treasury plus 2.5% (with a floor of 3.5%). Rate reset at similar index at end of year 10 and 20. Monthly payments of principal and interest. 25 year term and amortization.		
TERMS OF PARTICIPATION:	Fixed at closing for ten years at the ten-year US Treasury or 2%, whichever is greater, plus 125 basis points. Rate resets at similar index at end of years 10 and 20. Monthly payments of principal and interest. 25 year term and amortization.		

PRODUCT COSTS:

Renovation of Existing Building	\$1,414,733.00	Interest During Construction	\$138,191.00
Engineering & Architectural Fees	\$84,076.00	Refinancing	\$1,500,000.00
Finance Fees	\$76,758.00	Soft Costs	\$193,816.00
Accounting Fees	\$3,000.00	Security Costs	\$3,000.00
Legal Fees	\$99,031.00	Cleanup and prep for apartment leasing	\$140,815.00

New Equipment	\$160,000.00	Real estate taxes & Insurance	\$136,513.00
		Contingency	\$161,173.00
TOTAL COSTS:			\$4,111,106.00

JOBS:

NJ Full Time Jobs at Application	Expected New Full Time Eligible Jobs at Project Site	Full Time Maintained Jobs at Project Site	Estimated Construction Jobs
26	0	0	15

DEVELOPMENT OFFICER: Ivan Mendez **UNDERWRITER OFFICER:** Michael Conte

PETROLEUM UNDERGROUND STORAGE TANK (PUST)



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: April 14, 2021

SUBJECT: NJDEP Petroleum UST Remediation, Upgrade & Closure Fund Program

The following residential project has been approved by the Department of Environmental Protection to perform closure/upgrade and site remediation activities. The scope of work is described on the attached project summary:

PUST Residential Grant:

Prod 258153	Cheryl Scarduzio	\$101,120.00
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Total UST Funding – April 2021	\$101,120.00
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Tim Sullivan

Prepared by: Somattie D. Guman

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**Underground Storage Tank – Residential Grant****APPLICANT:** Cheryl Scarduzio

PROD-00258153

PROJECT USER(S): Same as applicant**PROJECT LOCATION:** 776 Radix Road Monroe Township Gloucester County**APPLICANT BACKGROUND:**

Cheryl Scarduzio is a homeowner seeking to remove a leaking 550-gallon residential #2 heating underground storage tank (UST) and perform the required remediation. The tank will be decommissioned and removed in accordance with NJDEP requirements. The NJDEP has determined that the project costs are technically eligible. Financial statements provided by the applicant demonstrate that the applicant's financial condition conforms to the financial hardship test for a conditional hardship grant.

OTHER NJEDA SERVICES:

None

APPROVAL REQUEST:

The applicant is requesting grant funding in the amount of \$101,120.00 to perform the approved scope of work at the project site.

FINANCING SUMMARY:**GRANTOR:** Petroleum UST Remediation, Upgrade & Closure Fund**AMOUNT OF GRANT:** \$101,120.00**TERMS OF GRANT:** No Interest; No Repayment**PROJECT COSTS:**

UST Project: Upgrade, Closure, Remediation	\$101,120.00
EDA Administrative Cost	\$250.00

TOTAL COSTS: \$101,370.00
DATE: 4/14/2021

INCENTIVE PROGRAMS

UEZ/SALEM SALES TAX EXEMPTION



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: April 14, 2020

SUBJECT: Salem County and Urban Enterprise Zone (UEZ) Energy Sales Tax Exemption Programs New Project Approvals

Request:

Consent to the following changes to existing Salem and Urban Enterprise Zone Energy Sales Tax Exemption ("Energy Sales Tax Exemption Program") delegations:

- 1) Align all existing delegations to Level 4 (Director with recommending officer), and
- 2) Eliminate the monetary threshold for approval of new exemption applications.

Delegated approvals by staff will be reported to the Members quarterly. Requests for new approvals of businesses applying as a group of two or more that collectively meet the employment thresholds will continue to be brought to Board for approval.

Background:

The Energy Sales Tax Exemption Program has been in place since 2004 to provide approved projects sales tax exemption on the purchase of natural gas and electricity. The program was initially administered by the Department of Commerce and assigned to NJEDA in 2009. To be approved, Salem and UEZ manufacturers must employ at least 50 or 250 full-time employees, respectively, at least 50 percent of whom are directly employed in a manufacturing process at the incented site. The law also allows requests for groups of two or more that collectively meet the employment thresholds under narrow circumstances. Upon EDA review and recommendation, the Division of Taxation will issue a UZ-6 or SC-6 Exemption to the business to provide to utility vendors in lieu of paying sales tax on energy purchases.

Currently, there are 16 active participants in the programs with annual benefits totaling approximately \$4.6 million dollars. The annual sales tax savings estimates to these businesses range from \$7,000 to \$780,000, and average \$306,000. While many of these manufacturers have been approved for sales tax exemption in the past, often failure to reapply timely causes them to be treated as "new" applications and opposed to "renewals".

Since 2018, EDA has expanded and reorganized its Portfolio Management and Compliance Division, to improve compliance oversight of its incentives and other programs. Internal controls were enhanced for the review of Energy Sales Tax Exemption Program eligibility including the requirement of a job log and WR-30 corroboration. As has always been the case, review generally begins with a site visit by business development followed by staff outreach to the Department of Labor and Workforce Development and the UEZ staff in the Department of Community Affairs to ensure the applicant is in good standing. Unlike many of our incentive programs, the Energy Sales Tax Exemption Program does not require material factor or cost benefit review, full-time employee categorizations of new and retained, bonus considerations, financial reviews, or a calculation of any award amount. Further, the complexity of the review of eligibility requirements does not have any correlation to the size of the estimated sales tax benefit.

Over the course of decades administrating this program, the Members have approved delegated authority to staff to manage routine matters. These incentives servicing delegations have included staff approval of all “renewals”, staff approval of new awards where the estimated sales tax exemption benefit is up to \$100,000, the and the ability to approve rescissions and/or recapture on defaulted obligations. These delegations were set at Level 2 and Level 4 signing authority.

Across all programs, delegated actions tend to grow over time and the signing level necessary for approval shifts downward as staff acquires greater experience, and processing requests become more routine.

With that in mind, staff reviewed the current delegations to assess continued applicability, effectiveness and whether the current signing authority aligns with similarly situated incentives.

Staff has concluded that as there is no credit exposure in the program and review is systematic in nature, all approvals, but for those that relate to applications of groups of two or more businesses that apply as collectively meeting program requirements, can be administered through delegated authority with recommendation of staff and Director approval [Level 4]. As such, the Members are requested to approve to: eliminate the estimated sales tax exemption threshold for new approvals as the current value does not correlate to any increase in complexity of review and reset the signing authority level for approving rescissions and/or recapture on defaulted obligations to Director [Level 4]. These changes will increase administrative efficiencies and allow for the more timely processing of approval requests.

As is current process, delegated approvals requests will be reported to the Members quarterly.

Recommendation:

Consent to the following changes to existing Salem and Urban Enterprise Zone Energy Sales Tax Exemption (“Energy Sales Tax Exemption Program”) delegations, with the exception for new approvals of businesses applying as a group of two or more that collectively meet the employment thresholds:

- 1) Align all existing delegations to Level 4 (Director with recommending officer)
- 2) Eliminate the monetary threshold for approval of new exemption applications.

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

Tim Sullivan, CEO

Prepared by: Susan Greitz

AUTHORITY MATTERS



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

RE: FMERA Purchase and Sale & Redevelopment Agreement with Regional Development Group, LLC, subsequently assigned to its affiliate, Barker Circle Partnership, LLC for the Barker Circle Complex in Oceanport

DATE: April 14, 2021

Request

I am requesting that the Board consent to the Fort Monmouth Economic Revitalization Authority ("FMERA") entering into the redevelopment agreement that is contained within FMERA's Purchase and Sale & Redevelopment Agreement, as amended ("PSARA") with Regional Development Group, subsequently assigned to its affiliate, Barker Circle Partnership, LLC ("BCP" or "Purchaser") for the sale and redevelopment of the Barker Circle Complex (the "Project") in the Fort's Oceanport Reuse Area.

Background

FMERA was created by P.L. 2010, c. 51 ("the Act") to carry out the coordinated and comprehensive redevelopment and revitalization of Fort Monmouth. The Act designates the New Jersey Economic Development Authority ("NJEDA") as a designated redeveloper for any property acquired by or conveyed to FMERA and authorizes FMERA to enter into redeveloper agreements with NJEDA for the redevelopment of the Fort, while also allowing FMERA to enter into redevelopment agreements directly with private developers.

In October 2016, FMERA entered into an Economic Development Conveyance Agreement ("EDC Agreement") with the Army for the Phase 2 portion of the Fort, and title to the property was transferred to FMERA in November 2016. The Barker Circle Complex is located in the Oceanport section of the Phase 2 property.

FMERA issued a Request for Offers to Purchase ("RFOTP") in connection with the planned redevelopment of the Barker Circle Complex on March 8, 2017. The Barker Circle Complex consists of an approximately 19.5± acre parcel of land containing seven buildings (Buildings 205, 206, 207, 208, 275, 282, and 287) totaling approximately 198,598 gsf located on Oceanport Avenue in the Main Post Area of Fort Monmouth. The Barker Circle Complex is located in the Fort's National Register Historic District and the buildings are considered contributing historic resources and are therefore subject to historic preservation covenants.

Responses to the RFOTP were due on June 2, 2017 and four responses were received from Regional Development Group, Tigger House, Winn Companies, and RPM Development, LLC. An evaluation committee scored the proposals and RDG and RPM Development, LLC were the highest ranked

proposals. FMERA requested that both proposers submit a best and final offer and RDG was considered the highest ranked proposal, based on purchase price. As RDG's proposal was also compliant with the RFOTP, the evaluation committee recommended proceeding with negotiations for a PSARA.

The PSARA was approved by the Board at its September 2019 meeting and executed by FMERA and RDG on November 7, 2019.

With FMERA's prior approval, RDG assigned the PSARA to an affiliate, BCP, immediately following execution of the PSARA. BCP remains subject to section 27 of the PSARA which includes, but is not limited to meeting the following compliance items: 1) Chapter 51 compliance, 2) demonstration of financial ability to complete the project, and 3) unqualified and unconditional acceptance of the terms and conditions of the PSARA. The PSARA approved by the Board, and subsequently assigned to BCP, included the following terms, which remain unchanged:

BCP will pay Four Million Eight Hundred and Fifty Thousand (\$4,850,000) Dollars for the property. Purchaser proposes to use the Barker Circle Complex for mixed-uses consisting of 75 residential units broken out as sixty (60) market rate units and fifteen (15) affordable housing units (for sale or for rent, solely at Purchaser's option), subject to confirmation that the affordable housing units satisfy Purchaser's obligation to set aside at least twenty (20%) percent of the total residential units in accordance with N.J.A.C. 19:31C-3.23. Purchaser will use best efforts to target a portion of the affordable housing units for occupancy by veterans. Purchaser proposes to reuse the remaining buildings for commercial use. Purchaser has the option to ground lease Building 275 or Building 282 from FMERA and take title to the balance of the Property. Purchaser's site plan and subdivision will be subject to FMERA's Mandatory Conceptual Review and Oceanport's planning board review.

First Amendment

The PSARA executed on November 7, 2019 included a due diligence period of ninety (90) days, with the option to extend the due diligence period for an additional sixty (60) days. Based on the complexity of the site and the historic nature of the property, additional time was required to fully assess and characterize the site. Under the Executive Director's discretion to administer the Board-approved PSARA, due diligence was extended until April 5, 2020. On April 1, 2020, BCP's counsel issued a letter to FMERA that conditionally terminated the PSARA to prevent due diligence from expiring and sought Board approval for an additional extension to the due diligence period. At its April 2020 meeting, the Board approved reinstating the PSARA and extending the due diligence period for approximately sixty (60) days from April 5, 2020 to allow for BCP to continue and conclude its due diligence investigations.

Second Amendment & Rule Modification

On May 20, 2020, the FMERA Board approved a Rule Modification under Executive Order 103 that allows COVID-impacted development projects with purchase prices over \$2,000,000 to request the return of its 10% deposit, as defined under N.J.A.C. 19:31C-2.7(b) so long as the developer certifies a financial hardship resulting from COVID-19 and that the released funds will be used for certain approved purposes. The Rule Modification did not alter the purchase price under the PSARAs.

On June 1, 2020, BCP submitted a letter to FMERA requesting the release of its 10% deposit and providing justification which demonstrated COVID-driven impacts to the project. BCP's letter cited delays obtaining

financing and the on-going development of new lending criteria in response to the pandemic, as significant hurdles to the project's development. The release of the 10% deposit was to be used to fund remaining site-work, planning & design required for the Mandatory Conceptual Review process and the Oceanport Planning Board review. BCP certified this financial hardship and use of the deposit prior to its release via a correspondence on June 9, 2020. As a result, the Second Amendment to the PSARA was executed on July 6, 2020. Under the terms of Second Amendment the Deposit under the Agreement was reduced to five percent (5%) of the original Purchase Price or \$242,500. The remaining ten percent of the Deposit or \$485,000 plus accrued interest was refunded to BCP on July 6, 2020.

Third Amendment

Under the terms of the PSARA, BCP proposed to reuse the remaining Barker Circle buildings for commercial use, specifically, Building 206 as office space, Building 275 as a theater, and Building 282 as a restaurant.

On July 1, 2020, FMERA staff received correspondence from BCP requesting an expansion of the allowable uses permitted in the buildings slated for commercial redevelopment. BCP cited current irregularities and vagaries of the real estate marketplace as cause for concern, noting that the targeted uses for Buildings 206, 275, and 282 have been subject to significant hardship in 2020 and face an unforeseeable future.

FMERA staff reviewed this request in conjunction with the March 8, 2017 RFOTP. The RFOTP permitted bidders to propose residential, office, research & development, institutional and/or health care related uses in Buildings 205-208 and Building 287. The RFOTP also permitted alternate uses for the Fire House (Building 282) and Kaplan Hall (Building 275) including office, research & development, retail, or other commercial uses. Museum or arts center uses were also permitted in Kaplan Hall.

Noting that the scoring for all compliant proposals remained unchanged and Regional Development Group remained the highest-ranking proposer, FMERA staff recommended and the FMERA Board approved the Third Amendment to PSARA at its August 2020 meeting.

The Third Amendment to the PSARA expanded the allowable uses as follows: Building 206 may include office, medical offices - excluding overnight stays - such as physical therapy, business lofts, and accessory childcare; Building 282 may include restaurant, brewpub, brewery, arts retail such as studios & gallery space, and second-floor offices not to exceed fifty percent (50%) of the total square footage; and Building 275 may include theater, arts uses, and ancillary office use. The Third Amendment to the PSARA was executed on September 14, 2020.

Pursuant to the FMERA Act, all purchasers of real estate on Fort Monmouth must enter into a redevelopment agreement containing the following provisions, which will be covenants running with the land until the redeveloper completes the project: (i) a provision limiting the use of the property to the uses permitted by the Reuse Plan or an amendment to the Reuse Plan as approved by the FMERA Board and uses permitted by FMERA's Land Use Rules; (ii) a provision requiring the redeveloper to commence and complete the project within a period of time that FMERA deems reasonable; and (iii) a provision restricting the transfer of the property or the redeveloper's rights under the PSARA prior to completion of the project. Based on the redevelopment provisions of the PSARA between FMERA and Barker Circle

Partnership, LLC, staff concludes that the essential elements of a redevelopment agreement between FMERA and BCP are sufficiently addressed and that it is not necessary for FMERA to enter into a separate redevelopment agreement with BCP for its redevelopment of the Barker Circle Complex.

Attached is the July 2, 2019 PSARA as amended between FMERA and Regional Development Group, subsequently assigned to its affiliate, Barker Circle Partnership. The PSARA specifies that Barker Circle Partnership, LLC will be confirmed as designated redeveloper of the Property upon NJEDA approval of the PSARA in accordance with N.J.S.A. 52:27I-38.

Recommendation

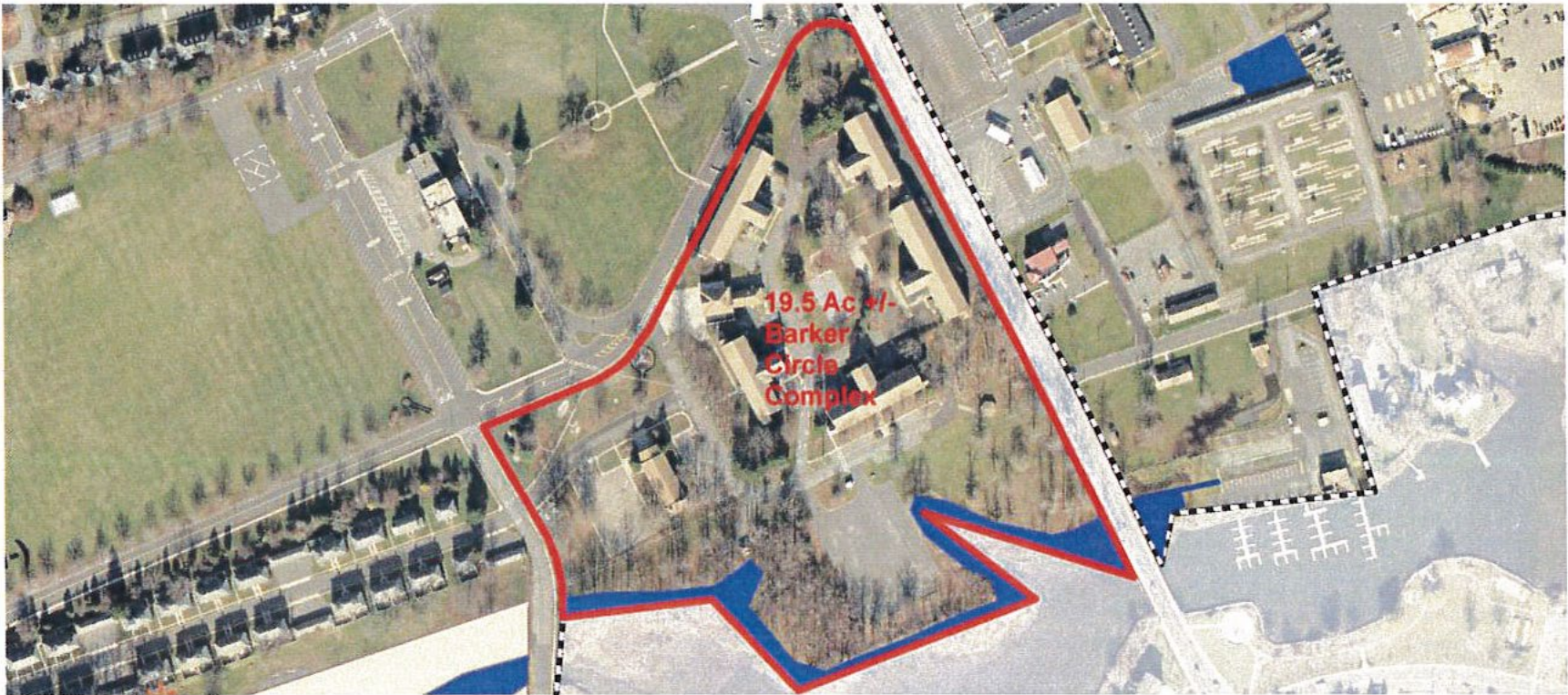
In summary, I am requesting that the Members consent to FMERA entering into the redevelopment agreement contained within the Purchase and Sale & Redevelopment Agreement with Barker Circle Partnership, LLC for the sale and redevelopment of the Barker Circle Complex in the Fort's Oceanport Reuse Area.



Tim Sullivan
Chief Executive Officer

Attachments: Purchase and Sale & Redevelopment Agreement
First Amendment to the Purchaser and Sale & Redevelopment Agreement
Second Amendment to the Purchase and Sale & Redevelopment Agreement
Third Amendment to the Purchase and Sale & Redevelopment Agreement
Parcel Map

Prepared by: Sarah Giberson & David E. Nuse



Barker Circle Complex, Fort Monmouth Main Post, Oceanport New Jersey



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

RE: Consent and Agreement of the Mortgagee with respect to New Jersey American Water Company easements on Fort Monmouth's Main Post in Eatontown and Oceanport, New Jersey

DATE: April 14, 2021

Summary

I am requesting the Members' approval to execute three Consent and Agreement of Mortgagee documents which subordinate the Authority's interest in certain roadways in Eatontown and Oceanport owned by the Fort Monmouth Economic Revitalization Authority ("FMERA"). These subordinations will preserve New Jersey American Water Company's easements and access rights to water mains it is installing to facilitate the Fort's redevelopment. I am also requesting delegation of authority to the Chief Executive Officer, to the Chief Economic Growth Officer, or to the Executive Vice President – Real Estate to approve future requests to subordinate the Authority's interest in Fort Monmouth property without further Board action, provided that the subordination would not negatively impact the Authority's collateral position under any current or future loans that the Authority may extend to FMERA and would further the development of this property.

Background

The Authority holds a mortgage dated August 3, 2018 as security for a loan issued to FMERA, originally in the amount of \$5,000,000. The loan is secured by a first mortgage on the FMERA Phase I properties in Tinton Falls and Eatontown, a second mortgage on the FMERA Phase II properties in Eatontown and Oceanport (behind the Monmouth County Improvement Authority), and an assignment of 20% of FMERA's net sales proceeds.

FMERA is the owner and operator of the former Army water system that currently services the Fort's Main Post. This system is over capacity, outdated and not suitable for future water usage requirements. Therefore, new mains are required to be installed to provide potable water service for current and future developments at the Fort. On December 16, 2015, the FMERA Board approved an MOU with Oceanport to fund the borough engineer's design of a water main application to New Jersey American Water Company ("NJAW") for the construction of new water mains in the Oceanport area of the Main Post. In June 2018, the FMERA Board approved an interagency agreement between FMERA and Eatontown to contract for the borough's engineer to design additional phases of the water main build-out to serve both sold properties and prospective purchasers on the Main Post. Since this time Phases 1, 2A and 3B have been built and Phase 3A is scheduled to begin construction April 2021.

In order to access and maintain these water mains, NJAW requires that FMERA execute three Deeds of Easement and Right of Way ("Deeds of Easement") and, prior to recording the Deeds of Easement, that the Authority execute three corresponding Consent and Agreement of Mortgagee

documents (the “Consents”). The Consents join the Authority in the Deeds of Easement and subordinate the Authority’s interest in the properties to the Deeds of Easement.

The Phase 2A easement is located in College Avenue and extends along Vanguard Avenue and Wilson Avenue to the Avenue of Memories, which is entirely in Eatontown. This line serves the Eatontown Parks Parcel, the County DPW site, the Artist Barracks, the Bowling Alley and the Eatontown DPW site. The Phase 3B easement is located entirely on Oceanport Way and Anson Avenue on a portion of Lot 2 in Block 110 in Oceanport and services both the Oceanport Municipal Complex and the Monmouth County Homeless Shelter. The to-be-built section of water main covered by the Phase 3A easement is also located in Oceanport and will service the OPort Partners development at the former Commissary/Warehouse/PX parcels. The Phase 1 water main was installed within a Monmouth County right of way. Phases 2A, 3B and 3A are located under roadways that remain under FMERA’s ownership. FMERA intends to dedicate those streets to the Boroughs of Oceanport and Eatontown over the next few years. In the interim, FMERA must grant NJAW easements so it can install and maintain the water mains.

The proposed Consents from the Authority to NJAW are limited to the Deeds of Easement above and do not reduce the collateral available to secure the debt. The Deeds of Easement are customary and necessary vehicles to support redevelopment, which is the primary objective of the Authority’s loan. As such, the request does not negatively impact the Authority’s collateral position.

The attached form of Consent and Agreement of Mortgagee is in substantially final form. The final terms of the Agreement will be subject to the approval of the Chief Executive Officer and the Attorney General’s Office.

I am also requesting the Members delegate authority to the Chief Executive Officer, to the Chief Economic Growth Officer or to the Executive Vice President – Real Estate to execute future subordination agreements with respect to the Authority’s interest in Fort Monmouth property without further Board action, provided such subordination agreements do not reduce the Authority’s collateral position under any current or future loans that the Authority may extend to FMERA and would further the development of this property.

Recommendation:

In summary, I am requesting the Members’ approval to execute three Consent and Agreement of Mortgagee documents which subordinate the Authority’s interest in certain roadways in Eatontown and Oceanport owned by the Fort Monmouth Economic Revitalization Authority, on final terms acceptable to the Chief Executive Officer and the Attorney General’s Office. These subordinations will preserve New Jersey American Water Company’s easements and access rights to water mains it is installing to facilitate the Fort’s redevelopment. I am also requesting delegation of authority to the Chief Executive Officer, to the Chief Economic Growth Officer, or to the Executive Vice President – Real Estate to approve future requests to subordinate the Authority’s interest in Fort Monmouth property without further Board action, provided that the subordination would not negatively impact the Authority’s collateral position under any current or future loans that the Authority may extend to FMERA and would further the development of this property.



Tim Sullivan

Attachments: Proposed Consent and Agreement of Mortgagee
Deed of Easement and Right of Way for Phase 2A
Deed of Easement and Right of Way for Phase 3B
Deed of Easement and Right of Way for Phase 3A

Prepared by: Kara A. Kopach and David E. Nuse

Prepared By: Kevin Rodier
New Jersey-American Water Company, Inc.
1 Water Street
Camden, NJ 08102

NEW JERSEY-AMERICAN WATER COMPANY, INC.

DEED OF EASEMENT AND RIGHT OF WAY

THIS INDENTURE, made this _____ day of _____, 2021, by and between Fort Monmouth Economic Revitalization Authority, a public body corporate and politic constituting an instrumentality of the State of New Jersey, having a principal address at 502 Brewer Avenue, Oceanport, NEW Jersey 07757, hereinafter referred to as "Grantor" and New Jersey-American Water Company, Inc., a corporation organized and existing under the laws of the State of New Jersey, having its principal office and place of business at 1 Water Street, Camden, New Jersey 08102, hereinafter referred to as "Grantee".

W I T N E S S E T H

Grantor, in consideration of the covenants and agreements hereinafter recited and the sum of One Dollar (\$1.00), the receipt of which is hereby acknowledged, does hereby give, grant and convey unto Grantee, its successors and assigns, forever, a nonexclusive 20' wide easement and a free, uninterrupted and unobstructed right of way, in, under, across and over the property of Grantor, subject to the reserved future use of the "Property" by Grantor as hereinafter described, designated as a Portion of Lot 2 in Block 110 on the Tax Map of the Borough of Oceanport, County of Monmouth, State of New Jersey. Said Property (except for those portions of the Property on which buildings or similar structures have been erected) easement shall be as described by **metes and bounds** as set forth on **Schedule A** which is attached hereto and made a part hereof, and as shown on the **drawing** entitled ALTA/NSPS (2016) Land Title Survey Lot 2 in Block 110 which is attached hereto and made a part hereof as set forth on **Schedule B**, for the purpose of Grantee installing, laying, operating, maintaining, inspecting, removing, repairing, renewing, replacing, relaying and adding to from time to time pipe or pipes, with necessary fittings, appurtenances and attached facilities, including laterals and connections (hereinafter collectively "Water Mains") for the transmission and distribution of water, which shall be at the sole cost of Grantee, unless otherwise stated herein.

Grantee, its successors and assigns, and their duly authorized agents, employees and contractors shall have the right to (i) enter in and upon the premises described above with personnel, machinery, vehicles and material during business hours, except during emergencies in which case Grantee may enter in and upon premises at any and all times, for the purposes stated above, (ii) cut, prune and remove trees, bushes, undergrowth and other obstructions interfering with the activities authorized herein, and (iii) do anything necessary, useful or convenient for the enjoyment of the easement herein granted. Grantee will make reasonable efforts to minimize impacts on Grantor's use of the property and Grantor's access to the Property.

The design of Grantee's Water Mains, including size, location and type of materials to be used shall be at the sole discretion of Grantee. The said Water Mains shall at all times be and remain the Property of, and subject to the sole control of, Grantee, its successors and assigns.

Grantor may in the future further develop the Property described on Schedule A. Grantor may in connection with such development install or cause to be installed additional utility services and may grant easements therefor to other utilities. In addition to the improvements discussed in paragraph c below, Grantor may install macadam, concrete or other surfaces to be used for parking areas, driveways, pedestrian sidewalks and other related purposes, including the installation of curbing, drains, catch basins and other improvements customarily installed in such areas. Accordingly, this easement and right of way herein granted is expressly conveyed subject to the following:

- A. Subject to the right of Grantor and others to use the easement area in common with the Grantee for the purpose of installing additional utility services therein and thereon, and to grant easements therefor to other utility companies, to the municipality or the municipal utility authorities having jurisdiction over same, it being understood that the easement and right of way herein granted shall be nonexclusive and shall be used in common with the Grantor and all other persons claiming by, under and through the Grantor and its and their respective heirs, administrators, executors, successors and assigns. Notwithstanding the foregoing, no other pipes or conduits shall be placed within ten (10) feet, measured horizontally, from the Water Mains except pipes or conduits crossing same at right angles. A minimum vertical distance of two (2) feet shall be maintained

between the pipes and conduits and the Water Mains unless a greater distance is specified by laws and regulations of the State of New Jersey. All sewer pipe shall be laid in accordance with laws and regulations of the State of New Jersey regarding separation of sanitary sewers and water mains in effect at the time of installation of the sewer pipe. No excavation or blasting shall be carried on which in any way endangers or might endanger the said Water Mains;

- B. Subject to the right of the Grantor, without the prior written consent of the Grantee, to make any and all use of the subsurface of the easement area, the surface of the easement area and the air space above the easement area for any and all purposes in Grantor's sole discretion, specifically including, but not limited to, parking, driveways, pedestrian walkways and other purposes hereinabove mentioned, provided, however, that such usage shall not prevent or hinder reasonable access by Grantee to, and use of, the Water Mains installed by Grantee in the easement area. In the event that any such usage by the Grantor of the subsurface of the easement area, in the reasonable judgment of Grantee, requires the realignment or relocation of any Water Mains of the Grantee, such realignment or relocation shall be accomplished by the Grantee within a reasonable time after written notice thereof by Grantor, allowing for weather conditions, and at the sole cost and expense of the Grantor or other party acting under authority of the Grantor, as the case may be; and
- C. The grant of this easement and right of way shall in no way restrict Grantor from constructing further buildings and structures on any part of the easement area, provided that no such building or structure shall interfere with rights herein granted to Grantee. In the event that Grantor proposes to use the surface of any easement area utilized by Grantee in such manner as to require, in the reasonable judgment of Grantee, relocation by Grantee of any Water Mains of the Grantee, such realignment or relocation shall be accomplished by Grantee within a reasonable time after written notice thereof by Grantor, allowing for weather conditions, and at the sole cost and expense of the Grantor or other party acting under authority of the Grantor, as the case may be.

Grantee agrees, by the acceptance of this Deed of Easement and Right of Way, to the following:

- A. That, upon any opening made in connection with any of the purposes of this easement and right of way, said opening shall be backfilled and resurfaced to as nearly as possible the same condition as existed when said opening was made, provided that Grantee shall not be obligated to restore landscaping other than reseeding lawn areas disturbed upon entry, all such work to be done at the expense of Grantee.
- B. Any and all claims for damages made or to be made against Grantor 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. That any and all claims for damages made or to be made against Grantor based in contract law, including, but not limited to, costs and expenses, shall be governed by and subject to the provisions of the New Jersey Contractual Liability Act, N.J.S.A. 59:1-1 et seq.
- C. The Grantee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the area of the Deed of Easement and Right of Way are located.
- D. The Grantee acknowledges that the within Deed of Easement and Right of Way is subject to the Environmental Protection Provisions set forth in **Schedule C** originally found in the Quitclaim Deed dated October 25, 2016 from the United States of America and recorded it with the Monmouth County Clerk on November 28, 2016 in Book 9199 at Pages 6736, et. seq. to Grantor.
- E. Within the limits of its respective legal powers, the Grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered within the Deed of Easement and Right of Way, the Grantee shall immediately notify the Executive Director of Grantor and protect the site and the material from further disturbance until the Executive Director of Grantor gives clearance to proceed.
- F. Grantee covenants and agrees to, at all times, indemnify, protect and save harmless Grantor from and against all cost or expense resulting from any and all losses, damages, detriments, suits,

claims, demands, judgments, costs and charges, which Grantor may directly or indirectly suffer, sustain or be subject to by reason or on account of the use of the Deed of Easement and Right of Way by Grantee, its guests, invitees, agents, or contractors, except for the gross negligence or willful misconduct of Grantor.

GRANTOR TO COMPLETE BELOW:

Grantor does hereby covenant with Grantee as follows:

1. Grantor is the owner in fee simple of the Property and has good title to convey the subject Deed of Easement and Right of Way,
2. Grantee shall quietly enjoy the said easement and right of way subject to the terms of this Deed of Easement and Right of Way;
3. That the premises hereby subjected to said easement and right of way are subject to no mortgages [except mortgage to the Monmouth County Improvement Authority dated November 17, 2016 and record November 28, 2016 and mortgage to the New Jersey Economic Development Authority dated August 3, 2018 and recorded on August 27, 2018]

IN WITNESS WHEREOF, Grantor and Grantee have duly executed this INDENTURE, all as of
the day and year first above written.

WITNESS:

By: _____
Print Name, Title

GRANTOR:

By _____
Kara Kopach
Deputy Executive Director
Date:

WITNESS:

By: _____
Print Name, Title

**GRANTEE: NEW JERSEY AMERICAN WATER
COMPANY, INC.**

By _____
Print Name:
Title:
Date:

Acknowledgment for Corporation

STATE OF NEW JERSEY :

COUNTY OF :

On this _____ day of March 2021, before me personally came to me known, Kara Kopach who, being by me duly sworn, did depose and say that she is the Deputy Executive Director of FMERA, the corporation described in and which executed the foregoing instrument; that she knows the seal of the said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that she signed her name thereto by like order.

Notary Public
My Commission Expires:

Acknowledgement for New Jersey-American Water Company, Inc.

STATE OF NEW JERSEY

COUNTY OF CAMDEN

On this _____ day of _____, 20__, before me, the undersigned authority, personally appeared _____, who, being by me duly sworn, did depose and say that he is the _____ of New Jersey-American Water Company, Inc., the corporation described in and which executed the foregoing instrument; that he/she knows the seal of the said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order.

Notary Public _____

My Commission Expires: _____

CONSENT AND AGREEMENT OF MORTGAGEE
(ONLY If property has mortgage)

_____, Mortgagee under a mortgage dated _____, recorded in the office of the Clerk of _____ County, State of New Jersey in Book _____, Page _____, et seq., (hereinafter referred to as the "Mortgagee") hereby joins in this Deed of Easement and Right of Way for the express purpose of subjecting to the operation and effect of this Deed of Easement and Right of Way all of its right, title and interest under the Mortgage and in and to the real Property described in this Deed of Easement and Right of Way.

Nothing in the foregoing provisions of this Consent and Agreement of Mortgagee shall be deemed in any way to create between any person or entity named in this Deed of Easement and Right of Way as "Grantor" and the undersigned any relationship of partnership or joint venture, or to impose upon the undersigned any liability, duty or obligation whatsoever.

Nothing in the within Consent and Agreement shall (a) constitute a waiver by Mortgagee of any of its rights under the Mortgage as against the Mortgagor, and/or (b) in any way release the Mortgagor from its obligation to comply with the terms, provisions, conditions, covenants, agreements and clauses of the Mortgage; and the provisions of the Mortgage shall remain in full force and effect and must be complied with by the Mortgagor.

IN WITNESS WHEREOF, Mortgagee has executed this Consent and Agreement of Mortgagee or cause it to be executed on its behalf by its duly authorized representatives, this _____ day of _____, 2021.

ATTEST:

By: _____

By: _____

By: _____

By: _____

Acknowledgment for Individual

STATE OF NEW JERSEY :

COUNTY OF :

On this ____ day of March, 2021, before me, the undersigned authority, personally appeared Kara Kopach, who acknowledged under oath to my satisfaction that she personally signed this Deed and that she signed, sealed and delivered this Deed as her voluntary act and deed.

Notary Public
My Commission Expires:

Acknowledgment for Corporation

STATE OF NEW JERSEY :

COUNTY OF :

On this ____ day of _____, 20__, before me personally came to me known, _____ who, being by me duly sworn, did depose and say that he/she resides at _____, that he/she is the _____, the corporation described in and which executed the foregoing instrument; that he/she knows the seal of the said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order.

Notary Public
My Commission Expires:

Acknowledgment for Partnership

STATE OF NEW JERSEY :

COUNTY OF :

On this ____ day of _____, 20__, before me, the undersigned authority, personally appeared _____, a partner of _____, a New Jersey Partnership, who acknowledged under oath to my satisfaction that he/she personally signed this Deed and that he/she signed, sealed and delivered this Deed as his/her voluntary act and deed.

Notary Public
My Commission Expires:

SCHEDULE A
(Legal Description/Metes and Bounds)



November 3, 2020

**DESCRIPTION OF PROPOSED WATER MAIN EASEMENT ALONG OCEANPORT WAY,
PORTION OF LOT 2 IN BLOCK 110
BOROUGH OF OCEANPORT, MONMOUTH COUNTY, NEW JERSEY**

Being the intent to describe all that certain tract or parcel of land being known as Portion of Lot 2 in Block 110 in the Borough of Oceanport, County of Monmouth, New Jersey, as shown on the plan entitled *"FORT MONMOUTH ECONOMIC REVITALIZATION AUTHORITY, ALTA/NSPS (2016) LAND TITLE SURVEY, PORTION OF LOT 2 IN BLOCK 110, BOROUGH OF OCEANPORT, MONMOUTH COUNTY, NEW JERSEY, EXHIBIT MAP SHOWING WATER MAIN EASEMENT"*, sheet 1 of 1, prepared by T&M Associates, dated November 3, 2020, being more particularly described as follows:

Beginning at a point on the westerly Right-of-Way (R.O.W.) line of Main Street, said point being the following course from the intersection of said R.O.W. line with the intersection of the common property boundary line of Lot 2 and Lot 5 in Block 110, and running thence;

- A. North 37 degrees 48 minutes 09 seconds East, along the existing westerly R.O.W. line of Main Street, a distance of 25.13 feet to the point or place of BEGINNING and running thence;
1. North 63 degrees 53 minutes 40 seconds West, along the proposed water main easement line being hereby established, across and through Block 110, Lot 2, a distance of 541.08 feet to an angle-point; thence
2. North 65 degrees 37 seconds 02 seconds West, continuing along the proposed water main easement line being hereby established, across and through Block 110, Lot 2, a distance of 26.52 feet to a point an angle-point; thence
3. North 63 degrees 21 minutes 59 seconds West, continuing along the proposed water main easement line being hereby established, across and through Block 110, Lot 2, a distance of 31.73 feet to an angle-point; thence
4. South 72 degrees 02 minutes 28 seconds West, continuing along the proposed water main easement line being hereby established, across and through Block 110, Lot 2, a distance of 2.65 feet to an angle-point; thence
5. North 23 degrees 56 minutes 32 seconds East, continuing along the proposed water main easement line being hereby established, across and through Block 110, Lot 2, a distance of 21.89 feet to an angle-point; thence
6. South 63 degrees 21 minutes 59 seconds East, continuing along the proposed water main easement line being hereby established, across and through Block 110, Lot 2, a distance of 24.01 feet to an angle-point; thence



November 3, 2020

**DESCRIPTION OF PROPOSED WATER MAIN EASEMENT ALONG OCEANPORT WAY,
PORTION OF LOT 2 IN BLOCK 110
BOROUGH OF OCEANPORT, MONMOUTH COUNTY, NEW JERSEY**

7. North 23 degrees 22 minutes 27 seconds East, continuing along the proposed water main easement line being hereby established, across and through Block 110, Lot 2, a distance of 217.16 feet to an angle-point; thence
8. North 23 degrees 47 minutes 27 seconds East, continuing along the proposed water main easement line being hereby established across and through Block 110, Lot 2, a distance of 171.88 feet to an angle-point; thence
9. North 22 degrees 54 minutes 34 seconds East, continuing along the proposed water main easement line being hereby established across and through Block 110, Lot 2, a distance of 62.83 feet to an angle-point; thence
10. North 24 degrees 06 minutes 08 seconds East, continuing along the proposed water main easement line being hereby established across and through Block 110, Lot 2, a distance of 73.81 feet to an angle-point; thence
11. North 24 degrees 33 minutes 16 seconds East, continuing along the proposed water main easement line being hereby established across and through Block 110, Lot 2, a distance of 33.64 feet to an angle-point; thence
12. North 19 degrees 50 minutes 32 seconds East, continuing along the proposed water main easement line being hereby established, across and through Block 110, Lot 2, a distance of 4.49 feet to an angle-point; thence
13. North 22 degrees 52 minutes 34 seconds East, continuing along the proposed water main easement line being hereby established, across and through Block 110, Lot 2, a distance of 132.84 feet to a point of curvature; thence
14. Continuing along the proposed water main easement line being hereby established, across and through Block 110, Lot 2, on a curve to the left, having a radius of 600.00 feet, a central angle of 19 degrees 19 minutes 19 seconds, a chord bearing of North 13 degrees 12 minutes 54 seconds East and distance of 201.38 feet, an arc distance of 202.34 feet to a point; thence



November 3, 2020

**DESCRIPTION OF PROPOSED WATER MAIN EASEMENT ALONG OCEANPORT WAY,
PORTION OF LOT 2 IN BLOCK 110
BOROUGH OF OCEANPORT, MONMOUTH COUNTY, NEW JERSEY**

15. North 03 degrees 33 minutes 15 seconds East, continuing along the proposed water main easement line being hereby established, across and through Block 110, Lot 2, a distance of 51.53 feet to an angle-point; thence
16. South 86 degrees 26 minutes 45 seconds East, continuing along the proposed water main easement line being hereby established, across and through Block 110, Lot 2, a distance of 20.00 feet to an angle-point; thence
17. South 03 degrees 33 minutes 15 seconds West, continuing along the proposed water main easement line being hereby established, across and through Block 110, Lot 2, a distance of 51.53 feet to a point of curvature; thence
18. Continuing along the proposed water main easement line being hereby established, across and through Block 110, Lot 2, on a curve to the right, having a radius of 620.00 feet, a central angle of 19 degrees 19 minutes 19 seconds, a chord bearing of South 13 degrees 12 minutes 54 seconds West and distance of 208.09 feet, an arc distance of 209.08 feet to a point; thence
19. South 22 degrees 52 minutes 34 seconds West, continuing along the proposed water main easement line being hereby established, across and through Block 110, Lot 2, a distance of 132.31 feet to an angle-point; thence
20. South 19 degrees 50 minutes 32 seconds West, continuing along the proposed water main easement line being hereby established, across and through Block 110, Lot 2, a distance of 4.78 feet to an angle-point; thence
21. South 24 degrees 33 minutes 16 seconds West, continuing along the proposed water main easement line being hereby established, across and through Block 110, Lot 2, a distance of 34.39 feet to an angle-point; thence
22. South 24 degrees 06 minutes 08 seconds West, continuing along the proposed water main easement line being hereby established, across and through Block 110, Lot 2, a distance of 73.52 feet to an angle-point; thence



November 3, 2020

**DESCRIPTION OF PROPOSED WATER MAIN EASEMENT ALONG OCEANPORT WAY,
PORTION OF LOT 2 IN BLOCK 110
BOROUGH OF OCEANPORT, MONMOUTH COUNTY, NEW JERSEY**

23. South 22 degrees 54 minutes 34 seconds West, continuing along the proposed water main easement line being hereby established, across and through Block 110, Lot 2, a distance of 62.77 feet to an angle-point; thence
24. South 23 degrees 47 minutes 27 seconds West, continuing along the proposed water main easement line being hereby established, across and through Block 110, Lot 2, a distance of 171.98 feet to an angle-point; thence
25. South 23 degrees 29 minutes 28 seconds West, continuing along the proposed water main easement line being hereby established, across and through Block 110, Lot 2, a distance of 144.27 feet to an angle-point; thence
26. South 23 degrees 08 minutes 32 seconds West, continuing along the proposed water main easement line being hereby established, across and through Block 110, Lot 2, a distance of 73.05 feet to an angle-point; thence
27. South 63 degrees 53 minutes 40 seconds East, continuing along the proposed water main easement line being hereby established, across and through Block 110, Lot 2, a distance of 7.84 feet to an angle-point; thence
28. North 26 degrees 02 minutes 22 seconds East, continuing along the proposed water main easement line being hereby established, across and through Block 110, Lot 2, a distance of 5.72 feet to an angle-point; thence
29. South 63 degrees 57 minutes 38 seconds East, continuing along the proposed water main easement line being hereby established, across and through Block 110, Lot 2, a distance of 20.00 feet to an angle-point; thence
30. South 26 degrees 02 minutes 22 seconds West, continuing along the proposed water main easement line being hereby established, across and through Block 110, Lot 2, a distance of 5.74 feet to an angle-point; thence
31. South 63 degrees 53 minutes 40 seconds East, continuing along the proposed water main easement line being hereby established, across and through Block 110, Lot 2, a distance of 534.34 feet to a point on the existing westerly R.O.W. line of Main Street; thence



November 3, 2020

**DESCRIPTION OF PROPOSED WATER MAIN EASEMENT ALONG OCEANPORT WAY,
PORTION OF LOT 2 IN BLOCK 110
BOROUGH OF OCEANPORT, MONMOUTH COUNTY, NEW JERSEY**

32. South 37 degrees 48 minutes 16 seconds West, along the existing westerly R.O.W. line of Main Street, a distance of 20.42 feet to the point or place of BEGINNING.

Containing 31,252 square feet (0.717 acre) of land more or less.

The above description is and is intended to describe all that Proposed Water Main Easement being a portion of Lot 2 in Block 110 in the Borough of Oceanport.

DESCRIPTION PREPARED BY:
T&M ASSOCIATES



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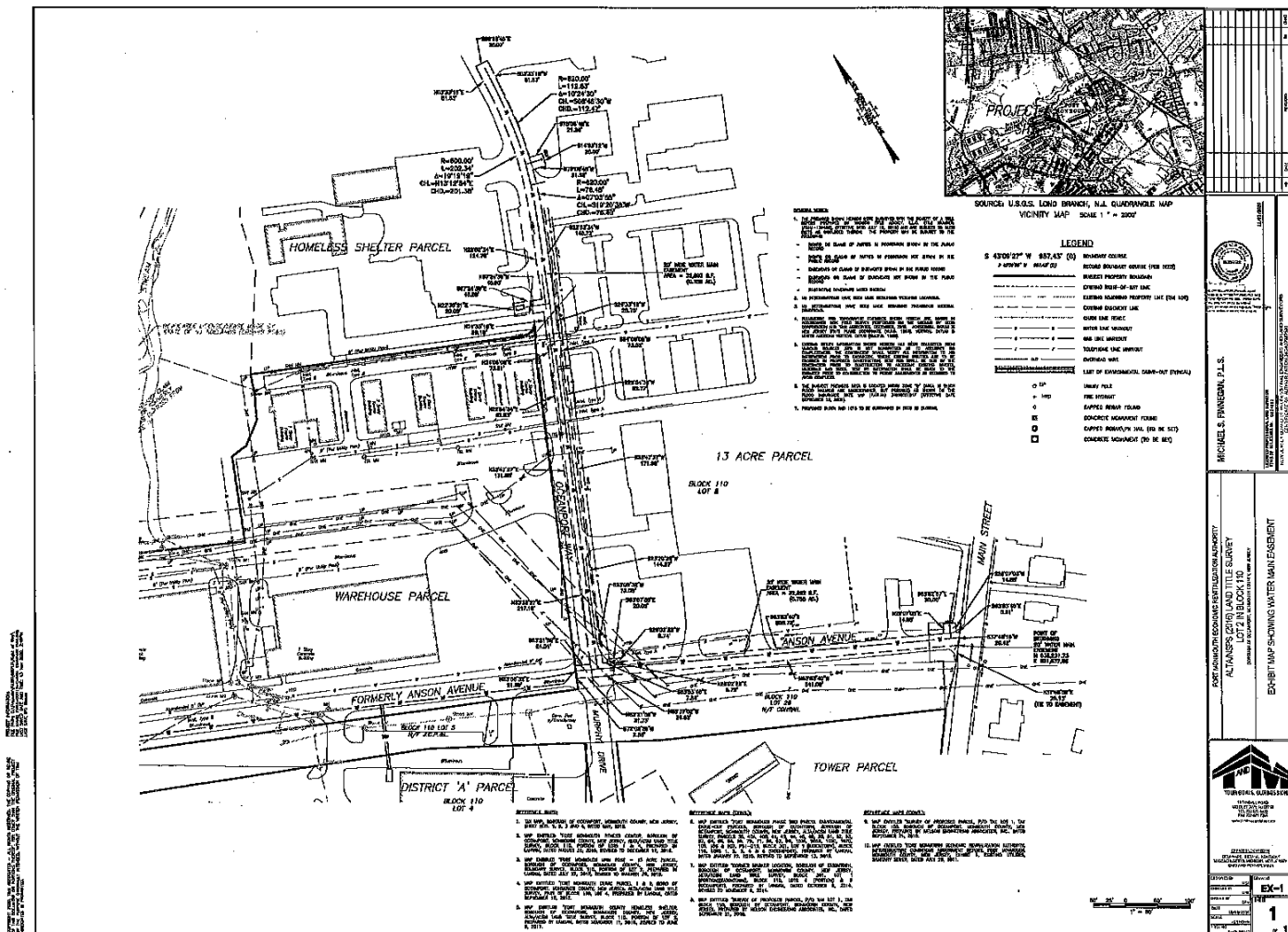
MICHAEL S. FINNEGAN, P.L.S.
NEW JERSEY LICENSE NO. GS34851

This item has been electronically signed and sealed by Michael Finnegan, PLS using a Digital Signature and date. Printed copies of this document are not considered signed and sealed and the signature must be verified on any electronic copies.

DocuSign

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SCHEDULE B
(Associated Easement Drawing/Plan)



SCHEDULE C
(Environmental Protections Provisions)

ENVIRONMENTAL PROTECTION PROVISIONS

1. LAND USE RESTRICTIONS

A. Ground Water Restriction. The GRANTEE, for itself, its successors and assigns, hereby covenants and agrees not to access or use, or allow access to or use of the ground water underlying the Property for any purpose without the prior written approval of the United States Department of the Army. For the purpose of this restriction, "ground water" shall have the same meaning as in section 101(12) of the Comprehensive Environmental Response, Compensation, And Liability Act of 1980, as amended (CERCLA). Notwithstanding the foregoing, the following activities and impacts shall be permissible and shall not violate the aforesaid restriction if conducted in compliance with all applicable laws and regulations: (i) dewatering solely because of incidental contact with ground water from construction and/or improvements on the Property; (ii) incidental pumping of ground water associated with preventing moisture from entering a sub-grade structure (i.e., sump pump); and (iii) ground water monitoring wells solely for the purpose of performing environmental sampling and/or monitoring.

B. Notice of Groundwater Monitoring Wells. The GRANTEE is hereby informed and does acknowledge the presence of 328 groundwater monitoring wells on the Property. The locations of these monitoring wells are shown on **Exhibit "E,"** attached hereto and made a part hereof. The GRANTEE shall not disturb or permit others to disturb the monitoring wells located on the Property without prior written approval from the GRANTOR and the New Jersey Department of Environmental Protection. Upon the GRANTOR's determination that a well is no longer necessary, the GRANTOR will close such well at the Army's sole cost and expense in accordance with applicable laws, regulations, and ordinances.

C. Modifying or Terminating the Restrictions. Nothing contained herein shall preclude the GRANTEE, its successors or assigns from undertaking, in accordance with applicable laws and regulations and without any cost to the GRANTOR, such action as would be necessary to allow access to or use the ground water underlying the Property. Prior to any such use of the ground water restricted under paragraph 1.A., above, the GRANTEE shall consult with and obtain the approval of the GRANTOR. Upon the GRANTEE's obtaining the approval of the GRANTOR, the GRANTOR agrees to prepare and execute an instrument modifying or terminating, as appropriate, the land use restriction set forth herein. The recordation of any such instrument in the land records of Monmouth County, New Jersey shall be the responsibility of the GRANTEE and shall be accomplished at no additional cost to the GRANTOR.

D. The GRANTEE, its successors and assigns shall submit any requests for modification or termination of the restrictions set forth herein to the GRANTOR, by first class mail, postage prepaid addressed as follows:

U.S. Army Engineer District, New York
26 Federal Plaza, Room 2007
(Attn: CENAN-RE-M)
New York, NY 10278

2. NOTICE OF THE PRESENCE OF ASBESTOS AND COVENANT - WARNING

A. The GRANTEE is warned that the Property contains friable and non-friable asbestos or asbestos-containing material (hereinafter referred to as "ACM"). Unprotected or unregulated exposures to asbestos in produce manufacturing, shipyard, and building construction workplaces have been associated with asbestos-related diseases. Both the U.S. Occupational Safety and Health Administration (OSHA) and the U.S. Environmental Protection Agency (EPA) regulate asbestos because the potential hazards associated with exposure to airborne asbestos fibers. Both OSHA and EPA have determined that such exposure increases the risk of asbestos-related diseases, which include certain cancers, and which can result in disability or death.

B. The GRANTEE acknowledges that it has been invited, urged and cautioned to inspect the Property prior to accepting the conveyance herein. More particularly, the GRANTEE acknowledges that it has been invited, urged and cautioned to inspect the Property as to its asbestos and ACM content and condition and any hazardous or environmental conditions relating thereto. **Exhibit "F,"** attached hereto and made a part hereof, provides an asbestos assessment summary. Notwithstanding the foregoing notice, the GRANTEE shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Property including, without limitation, any asbestos and ACM hazards or concerns.

C. Any description of the Property or other information relating to the condition of the Property provided by the GRANTOR to the GRANTEE is based on the best information available to the Department of the Army and is believed to be correct, but an error or omission, including, but not limited to, the omission of any information available to the agency having custody over the Property and/or other Federal agency, shall not constitute grounds or reason for any claim by the GRANTEE against the GRANTOR, including, without limitation, any claim for allowance, refund, or deduction from the purchase price.

D. The GRANTOR assumes no liability for damages for personal injury, illness, disability, or death, to the GRANTEE, or to the GRANTEE's successors, assigns employees, invitees, or any other person subject to GRANTEE'S control or direction, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Property that is the subject of the conveyance herein, whether the GRANTEE, its successors or assigns has or have properly warned or failed properly to warn the individual(s) injured.

E. A list of buildings on the Property that have been determined to contain friable asbestos is set forth in **Exhibit "F,"** attached hereto and made a part of hereof. The GRANTEE covenants and agrees to undertake any and all asbestos remediation or abatement in the buildings listed in the said **Exhibit "F"** that may be required under applicable law or regulation at no expense to the GRANTOR. The GRANTOR has agreed to convey the said buildings to the GRANTEE prior to remediation or abatement of asbestos and/or ACM hazards in reliance upon the GRANTEE's express representation and covenant to perform the required asbestos abatement or remediation of the said buildings. The GRANTEE further covenants and agrees that, in its use and occupancy of the Property, it will comply with all Federal, State, and local laws and regulations relating to asbestos and ACM and to be responsible for any future remediation or abatement of asbestos and/or ACM, including asbestos and/or ACM in or on buried pipelines, found to be necessary under applicable laws or regulations.

3. NOTICE OF THE PRESENCE OF LEAD-BASED PAINT AND COVENANT LIMITING THE USE OF THE PROPERTY FOR RESIDENTIAL PURPOSES

A. Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

B. The GRANTEE is hereby informed and does acknowledge that all buildings, residential and other real property improvements, located on the Property, which were constructed or rehabilitated prior to 1978, are known or presumed to contain lead-based paint.

C. The following records or reports available to the GRANTOR pertaining to lead-based paint or lead-based paint hazards on the Property have been provided to the GRANTEE:

Fort Monmouth Lead Hazard Assessment Project Summary, July 16, 1996, (ADS Environmental)
Lead-Based Paint Survey, U.S. Army Garrison Fort Monmouth, New Jersey, September 5, 2011
(Bureau Veritas North America)
Lead-Based Paint Inspection, Twenty-two (22) Housing Units, Fort Monmouth, New Jersey,
September 11, 2014 (Bureau Veritas North America)
Final Environmental Contamination Assessment Report at Fort Monmouth, New Jersey, October
2015

D. The GRANTEE hereby affirms receipt of the records or reports identified herein and the lead-hazard information pamphlet required under 15 U.S.C. § 2696.

E. The GRANTEE hereby acknowledges that it has conducted or has had the opportunity to conduct the risk assessment or inspection required by 24 C.F.R. § 35.90(a) with regard to the Property. The GRANTEE shall be deemed to have relied solely on its own judgment in assessing the condition of the Property with regard to lead-based paint and any lead-based paint hazards.

F. The GRANTEE for itself, its successors and assigns hereby covenants and agrees that it shall not permit the occupancy or use of any buildings or structures on the Property as a residential dwelling, as defined under 24 C.F.R. § 35.86, without complying with all applicable laws and regulations pertaining to lead-based paint and lead-based paint hazards. Prior to permitting the occupancy of any building or structure on the Property where its use subsequent to the conveyance herein is intended for residential habitation, the GRANTEE specifically agrees to perform, at its sole expense, the GRANTOR's abatement responsibilities under title X of the Housing and Community Development Act of 1992 (Residential Lead-Based Paint Hazard Reduction Act of 1992), as amended.

4. NOTICE OF THE PRESENCE OF PESTICIDES AND COVENANT

A. The GRANTEE is hereby notified and acknowledges that registered pesticides have been applied to the Property and may continue to be present thereon. The GRANTOR and GRANTEE know of no use of any registered pesticide in a manner (1) inconsistent with its labeling or with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. § 136, et seq.) and other applicable laws and regulations, or (2) not in accordance with its intended purpose.

B. The GRANTEE covenants and agrees for itself, its successors and assigns that if the GRANTEE or its successors or assigns, as the case may be, takes any action with regard to the Property, including demolition of structures or any disturbance or removal of soil that may expose, or cause a release of, a threatened release of, or an exposure to, any such pesticide, the GRANTEE, its successors and assigns, as the case may be, assume all responsibility and liability therefor.

BOARD MEMORANDA -FYI ONLY



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: April 14, 2021

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

The following projects were approved under Delegated Authority in March 2021:

Direct Loan Program:

- 1) 661 South 11 LLC (PROD-00258208), located in Newark City, Essex County, is a real estate holding company formed in 2021 to purchase the project property. The operating company, Elowel Inc. is an e-commerce retailer of children's clothing. The NJEDA approved a \$159,000 Direct loan. Proceeds will be used to assist in the purchase of the project property to relocate from Brooklyn, NY to Newark, NJ and to expand operations. Currently, the Company has three employees and plans to create three new positions over the next two years.

Micro Business Loan Program:

- 1) 8 Crown Court LLC (PROD-00228172 & 00258268), located in Red Bank Borough, Monmouth County, was formed in 2016 as a healthy fast food restaurant that sells fresh salads, pastas with homemade sauce, panini, and warm bowls. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable working capital loan. Proceeds will be used to purchase inventory, supplement payroll, rent and utilities. Currently, the Company has two employees.
- 2) Angelico Winery LLC (PROD-00224482 & 00258218), located in Delaware Township, Hunterdon County, was formed in 2019 as a small premium winery that grows and sells high quality vinifera wine. The NJEDA approved a \$45,000 working capital loan and a \$5,000 forgivable working capital loan. Proceeds will be used to supplement existing cash from operations to cover working capital expenses such as bottles, corks, barrels, and paper bags. Currently, the Company has one employee.
- 3) Applause Productions LLC (PROD-00224285 & 00258252), located in Trenton City, Mercer County, was formed in 2018 as an audience and casting company that hires contract and freelance workers. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable working capital loan. Proceeds will be used to cover payroll, marketing, legal, and consultant services. Currently, the Company has one employee.

- 4) Athletic Arts Academy NJ LLC (PROD-00224407 & 00258239), located in Orange City, Essex County, was formed in 2014 as a youth gymnastics training facility offering year-round instruction, health and fitness programs. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable working capital loan. Proceeds will be used to supplement payroll. Currently, the Company has three employees.
- 5) Ayda Consulting LLC (PROD-00224397 & 00258228), located in Highland Park Borough, Middlesex County, was formed in 2019. Ayda Consulting LLC is a home-based business that provides marketing consulting services for marketing strategies, development and research, sales management, and customer service to small and medium sized businesses. The NJEDA approved a \$17,361 working capital loan and a \$1,929 forgivable working capital loan. Proceeds will be used to purchase equipment and for working capital. Currently, the Company has one employee.
- 6) B. Nathaniel Bespoke Tailoring DBA B. Nathaniel Bespoke Custom Clothiers (PROD-00224284 & 00258213) is located in New Brunswick City, Middlesex County. The Company was formed in 2011 as a small retail clothing store that specializes in custom tailoring and alterations for special occasion clothing. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable working capital loan. Proceeds will be used to supplement inventory, rent and utilities. Currently, the Company has one employee.
- 7) BDJ Solution LLC (PROD-224267 & 00258266), located in Montville Township, Morris County, was established in 2018 as an importer of products such as cosmetics, athleisure wear, fine jewelry, etc. from Korea and sells them within the US. The Company runs multiple shopping websites through which sales are booked. The NJEDA approved a \$45,000 working capital loan and a \$5,000 forgivable working capital loan. Proceeds will be used to support the payment of inventory, payroll and lease. Currently, the Company has one employee and plans to create one new job over the next two years.
- 8) Best Furniture Corporation (PROD-00228309 & 00258270), located in Passaic City, Passaic County, was formed in 2014 as a retail furniture store that sells beds, mattresses, sofas and other goods at affordable prices. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable working capital loan. Proceeds will be used to purchase inventory, utilities and rent payments. Currently, the Company has one employee.
- 9) Bits of Bliss LLC DBA The Happy Belly Cafe (PROD-00224339 & 00258260), located in Clifton City, Passaic County, was formed in 2018 as a cafe and restaurant that offers specialty drinks, breakfast, sandwiches and salads for dine-in, takeout or delivery service. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable working capital loan. Proceeds will be used to purchase inventory, supplement payroll, rent and utilities. Currently, the Company has one employee.
- 10) Butterfly Kiss Eyelash Studio Inc. (PROD-00228390 & 00258261), located in Little Falls Township, Passaic County, was established in 2018 as a beauty salon. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable working capital loan. Proceeds will be used to supplement payroll, rent and utilities. Currently, the Company has one employee.
- 11) Champagnepapi LLC (PROD-228136 & 00258278), located in Freehold Borough, Monmouth County, was formed in 2018 as a real estate developer. The NJEDA approved a \$36,900 working capital loan and a \$4,100 forgivable working capital loan. Proceeds will be used to purchase equipment, inventory, and supplement taxes and mortgage payments. Currently, the Company has one employee.

- 12) Dragonfly Designs (PROD-00224544 & 00258269), located in Vineland City, Cumberland County, was established in 2017 as a home-based business that makes personalized items for events and parties, including shirt, wine glasses, ornaments and gifts. The NJEDA approved an \$8,550 working capital loan and a \$950 forgivable working capital loan. Proceeds will be used to purchase equipment and working capital. Currently, the Company has one employee.
- 13) Flexitransit LLC (PROD-00224222 & 00258273), located in New Brunswick City, Middlesex County, was formed in 2018 to provide on-demand, private transportation and driver services for groups of six or more passengers. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable working capital loan. Proceeds will be used to support payroll costs. Currently, the Company has five employees and plans to create seven new positions within the next two years.
- 14) Frank & Pollack Limited Liability Company (PROD-00229313 & 00258229), located in Newark City, Essex County, was established in 2011 as an immigration law firm. The NJEDA approved a \$10,800 working capital loan and a \$1,200 forgivable working capital loan. Proceeds will be used for payroll, rent, utilities and to purchase inventory. Currently, the Company has two employees.
- 15) Janus Enterprise, Inc. (PROD-00228369 & 00258211), located in Branchburg Township, Somerset County, was formed in 2004 as a provider of quick lubrication and cash washing services for automobiles. The NJEDA approved a \$45,000 working capital loan and a \$5,000 forgivable working capital loan. The Company currently has five employees.
- 16) JMC Solutions Corporation DBA JMC Solutions Corp. (PROD-00224514 & 00258235), located in Trenton City, Mercer County, was formed in 2017 and aids its local community with immigration process, visa petitions, translators and notary services. The NJEDA approved a \$10,080 working capital loan and a \$1,120 forgivable working capital loan. Proceeds will be used to supplement payroll, lease and utilities. Currently, the Company has one employee.
- 17) KKC Food Inc. DBA Krauszers Food Store (PROD-00228231 & 00258242), located in Edison Township, Middlesex County, was established in 2017 as a convenience store that sells a variety of food items including fried chicken, sandwiches, hot food, cold food, etc. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable working capital loan. Proceeds will be used to cover payroll, rent and purchase inventory. Currently, the Company has four employees.
- 18) Laurie Jones DBA Jersey Girl Caterers (PROD-00224235 & 00258209), located in Fairfield Borough, Essex County, was established in 2017 as a high end off-premise catering for executive meetings and events. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable working capital loan. Proceeds will be used to purchase new equipment and support business operating expenses. Currently, the Company has three employees.
- 19) Lively McCabe LLC DBA Lively McCabe Entertainment (PROD-00228407 & 00258254), is located in Ridgewood Village, Bergen County. Formed in 2017, Lively McCabe Entertainment is a media packaging company that specializes in manufacturing derivative copyrights and licensing the performance rights to local theater groups globally. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable working capital loan. Proceeds will be used to sustain business operations and support projects that have started in preparation of theaters reopening. Currently, the Company has three employees.

- 20) Mercer Planning Associates, LLC (“MPA”) (PROD-00228188 & 00258210), located in Jersey City, Hudson County, was established in 2007. MPA is a boutique land-use planning, home-based business that provides comprehensive services to public sector and non-profit clients. The NJEDA approved a \$45,000 working capital loan and a \$5,000 forgivable working capital loan to cover payroll costs. The Company currently has one employee.
- 21) MFA International LLC (PROD-00224366 & 00258282), located in Fairview Borough, Bergen County, was formed in 2017 as a wholesaler of clothes and women’s purses to online businesses and also resells to large retail chains. The NJEDA approved a \$22,050 working capital loan and a \$2,450 forgivable working capital loan. Proceeds will be used to supplement existing cash from operations to purchase inventory. Currently, the Company has one employee.
- 22) New C C Nails LLC (PROD-00228391 & 00258258), located in Hillsborough Township, Somerset County, was established in 2019 as a nail salon. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable working capital loan. Proceeds will be used to help cover lease, utilities and payroll business expenses. Currently, the Company has three employees.
- 23) NJStarLimo LLC (PROD-00224255 & 00258262), located in Perth Amboy City, Middlesex County, was formed in 2017 as a tri-state car and limo transportation service for airport, corporate travel, proms and weddings. The NJEDA approved a \$21,465 working capital loan and a \$2,385 forgivable working capital loan. Proceeds will be used for working capital needs. Currently, the Company has one employee.
- 24) Rachel Nail Spa LLC (PROD-00224441 & 00258271), located in East Rutherford Borough, Bergen County, was established in 2013 as a nail and spa salon that provides nail care, pedicure, waxing and other skincare services. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable working capital loan. Proceeds will be used to support lease payments. Currently, the Company has one employee.
- 25) Robbi Rose Productions, LLC (PROD-00224262 & 00258256), located in Trenton City, Mercer County, is an audience and casting company that caters to various large companies. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable working capital loan. Proceeds will be used to supplement existing cash from operations to cover payroll and general operating expenses. Currently, the Company has one employee.
- 26) Sunflower Global LLC DBA ClaraNY (PROD-00224365 & 00258222), located in Fairview Borough, Bergen County, was formed in 2016 as an online company that sells women’s totes and bags. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable working capital loan. Proceeds will be used to purchase inventory. Currently, the Company has one employee.
- 27) The Law Office of Steven H. Wolff LLC DBA Steven H. Wolff, Esq. (PROD-00224242 & 00258214), located in Passaic City, Passaic County, was established in 2010 as a general practice law firm that provides legal services and represents individuals and small business in areas including family law, personal injury, immigration law, criminal law and DUI. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable working capital loan. Proceeds will be used to cover lease, payroll and utilities. Currently, the Company has two employees.

- 28) The Park's Cleaners, Inc. (PROD-00228289 & 00258248), located in Rockaway Township, Morris County, was formed in 2006 as a dry cleaning and laundry business specializing in cleaning, pressing, ironing, mending and sewing a variety of different items, primarily clothing. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable working capital loan. Proceeds will be used to purchase inventory, cover payroll, rent, utilities and insurance. Currently, the Company has two employees.
- 29) United Soybean Growers, Inc. (PROD-00228179 & 00258249), located in Woodbridge Township, Middlesex County, was formed in 2014 to operate a Non-GMO soybean farm and processing plant. The NJEDA approved a \$22,050 working capital loan and a \$2,450 forgivable working capital loan. Proceeds will be used for payroll and to purchase inventory. Currently, the Company has one employee.
- 30) Vermont Ski Tours LLC DBA Vermont Ski Tours (PROD-224266 & 00258247), located in West Deptford Township, Gloucester County, was formed in 2009 to organize and sell discounted individual and group vacation packages to ski resorts throughout the Mid-Atlantic and New England. These vacation packages include bus transportation, lodging, meals, and lift tickets. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable working capital loan. Proceeds will be used to purchase inventory and cover operating expenses. Currently, the Company has one employee.



Tim Sullivan, CEO

Prepared by: G. Robins



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: April 14, 2021

SUBJECT: Real Estate Division Delegated Authority for Leases and Right of Entry (ROE)/
Licenses for First Quarter 2021 - *For Informational Purposes Only*

The following approvals were made pursuant to Delegated Authority for Leases and ROE/
Licenses in January, February and March 2021 :

LEASES

<u>TENANT</u>	<u>LOCATION</u>	<u>TYPE</u>	<u>TERM</u>	<u>S.F.</u>
API Pharma Tech	Bioscience Center Incubator	Month to Month	One Year	1,600sf
Euprotein	Bioscience Center Incubator	Lease Extension	One Year	2,400sf
Delve Therapeutics	Bioscience Center Incubator	New Lease	One Year	900sf
Molecular Innovation	Bioscience Center Incubator	Renewal	One Year	1,300sf
TheWell Bioscience	Bioscience Center Incubator	Renewal	One Year	1,300sf
Mito Biopharma	Bioscience Center Incubator	Renewal	One Year	125sf
Oyster Point Pharma	Bioscience Center Step Out Labs	New	3 years	2,483sf
Genomic Prediction	Bioscience Center Step Out Labs	Amendment	8 months	406sf
Kamat Pharmatech	Bioscience Center Step Out Labs	Amendment	9 months	1,610sf

COVID19 LEASE DEFERRAL

<u>TENANT</u>	<u>LOCATION</u>	<u>TYPE</u>	<u>TERM</u>	<u>AMOUNT</u>

RIGHT OF ENTRY/LICENSES/EXTENSIONS

<u>ENTITY</u>	<u>LOCATION</u>	<u>TYPE</u>	<u>CONSIDERATION</u>
CBS Studios	Barnes Street Parking Lot	ROE to park production trailers.	\$1.00

MISCELLANEOUS

<u>ENTITY</u>	<u>LOCATION</u>	<u>TYPE</u>	<u>CONSIDERATION</u>
None			



Tim Sullivan
Chief Executive Officer

Prepared by: Stacy Pellegrino

EXECUTIVE SESSION

ECONOMIC GROWTH



EXECUTIVE SESSION

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: April 14, 2021

SUBJECT: Request to Amend the Authority's Letter of Intent (LOI) with PSEG Regarding the New Jersey Wind Port (NJWP) in order to: Increase Funding to Include Certain Critical Path Early Site Works; Extend the Cooperation Period; and Clarify Cost Reimbursement Timing

REQUEST

The Members of the Board are asked to approve an amendment to the Authority's existing Letter of Intent (LOI) with PSEG Nuclear ("PSEG") regarding the development of the New Jersey Wind Port (NJWP) project. The purpose of the amendment includes:

1/ An expansion of the scope of the LOI to include critical-path early site works and associated permitting and project management costs.

Early site works will be contracted and overseen by PSEG on the Authority's behalf. Approval of works will be strictly governed in accordance with the existing LOI governance process, with major works¹ subject to additional oversight by Authority Staff.

Members are asked to approve a not-to-exceed budget of \$8.4 million to cover the cost of critical path early site works outlined in the LOI amendment. This amount includes \$1 million of contingency for change orders and additional related works. The level of contingency reflects certain unknowns at the current time that have the capacity to increase costs. The funding total is based on the sum of estimated costs by activity; however Staff request to reserve the right to reallocate funds across works provided total costs do not exceed the aggregate approval amount.

¹ Major works are works with an estimated total cost of \$1 million or more

The funding request is additional to the existing \$7 million LOI cap. Members should note that all early site works costs incurred by PSEG under the LOI amendment will be reimbursed by the Authority on a monthly invoicing basis.

2/ An extension of the LOI cooperation period from May 31, 2021 until December 31, 2021. This will allow for the completion of early site works under the LOI. The cooperation period will cease sooner if early works are completed prior to this date;

3/ A clarification of the timing of reimbursement by the Authority for costs incurred by PSEG under the LOI, excluding early site works costs, to the earlier of the cooperation period expiration date (December 31, 2021), or the Authority securing financing or a funding appropriation. Currently, this requirement is more narrowly defined in the LOI as the earlier of the cooperation period expiration date or financial close.

The LOI amendment is necessary to preserve the current target of commencing core construction in Quarter 4 2021; and target completion of Phase 1 of the project in Quarter 1 2024.

Staff anticipate executing a Ground Lease with PSEG covering all Phase one parcels by no later than June 30, 2021. If a Ground Lease is not in place by June 30, 2021, Staff will instruct PSEG to cease early site works. This condition aims to cap the Authority's cost exposure prior to securing property rights. Staff will update the Board on lease progress at the time of the May meeting.

Approval of the LOI amendment and early works budget will increase the Authority's approved funding to-date for the New Jersey Wind Port (NJWP) project to \$30.5 million; of which \$15.5 million is attributable to (anticipated) PSEG cost reimbursement. The Authority's actual spending on the NJWP project to-date is estimated at \$13.6 million through March 31, 2021.

BACKGROUND

Extending the cooperation period to include early site works

Since late 2019, NJEDA has partnered with PSEG on permitting, preliminary design and related preconstruction works on the NJWP project, which is located on PSEG-owned property at Lower Alloways Creek, Salem County. This has allowed the project to progress on schedule, while NJEDA finalizes a long-term Ground Lease and procures a Construction Manager (CM).

The Authority entered a non-binding LOI with PSEG Nuclear in October 2019 for the purpose of analyzing the Lower Alloways Creek site's suitability as an offshore wind port. Following the conclusion of that assessment, which found the site to be the most technically viable and economically beneficial of the sites under consideration, NJEDA entered into a binding LOI with PSEG in March 2020 to begin early-stage project development. The LOI has been extended through subsequent board approvals – with the latest amendment (approved at the January 2021 Board) extending the LOI cooperation period to May 31, 2021.

The current amendment before the Board would extend the LOI cooperation period to December 31, 2021, which will allow for the completion of critical path early site works. An indicative schedule of early site works completion is included in Table 1 below. The Cooperation Period end date will be brought forward should early works be completed prior to this date.

Given the long term nature of the ground lease (78 years including options), and contractual complexities stemming from the adjacent operational Hope Creek nuclear plant, the target for lease finalization has been revised to Quarter 2 2021; meaning the Authority does not currently have access to the site in order to undertake early site works. Commencing early site works under the LOI also provides schedule benefits relative to delaying these works until a CM is onboard. The CM is currently under procurement with a Requests for Proposals (RFP) expected to be issued in early April and an award expected to be made in May 2021. Recognizing the need for the CM to get up to speed with the project and allowing several more months for the CM to procure sub-contractors the earliest that site works could commence through the CM would be Quarter 3 2021. By extending the LOI cooperation period and expanding the scope of the LOI to include critical path early site works the Authority can derive schedule benefits. Such early site works include concrete removal and dewatering of an existing CDF in anticipation of dredge placement, sooner, in-turn preserving the ability to commence core construction in Quarter 4, 2021.

The early site works and associated costs that Staff are requesting be funded through the LOI amendment total \$8.4 million, comprising \$6.6 million for known early site works, \$0.8 million for associated costs (PSEG project management costs and permitting fees and charges) and \$1 million in contingency for potential change orders and/or additional (unknown) early site works.

The early site works budget was developed with the support of the Authority's technical advisors, WSP, engineer-of-record, Moffatt & Nichol (M&N) and PSEG. The level of contingency reflects certain unknowns at the current time that have the capacity to increase costs, such as the precise quantity of sub-surface concrete or weather impacts (rain volumes) over the early works period.

The LOI bounds the use of the contingency budget to concrete excavation, environmental testing, dewatering, site preparation, permitting, design and associated technical studies. Early site works are summarized in Table 1 below, and outlined in further detail in Attachment A.

Table 1 – Costs under the LOI amendment

Early site works

	Major works (Y/N)²	Not-to-exceed amount	Contractor selection	Expected completion date
Permitting support for PSEG facility relocation	N	\$151,300 (Vendor quote)	AKRF (PSEG’s permitting advisor)	12/31/21
Permitting support associated with beneficial reuse (of dredge) evaluation	N	\$250,000 (Vendor quote)	AKRF	12/31/21
Environmental monitoring	N	\$25,000 (Vendor quote)	AKRF	12/31/21
Removal of subsurface concrete from Parcel A	Y	\$5,000,000 (Engineer-of- record estimate)	To be contracted by PSEG	10/1/21
Dewatering of Parcel B	Y	\$1,000,000 (Engineer-of- record estimate)	To be contracted by PSEG	12/31/21
Settlement analysis	N	\$142,500 (Vendor quote)	S&L (PSEG’s existing contractor)	9/1/21
Outsourced safety planning and works coordination	N	\$25,000 (Vendor quote)	To be contracted by PSEG	10/1/21
TOTAL		\$6,593,800		

Associated costs

	Not-to-exceed amount
PSEG (anticipated) internal labor costs associated with site works project management ³	\$700,000
Permitting fees & charges (cost directly paid to permitting authorities)	\$100,000
TOTAL	\$800,000

² As detailed further below, “major” early site works are subject to additional governance requirements intended to provide the Authority with greater direct control over works scoping and completion

³ The internal costs estimate is based on an assumed 8 months

Contingency

	Not-to-exceed amount
Contingency for change orders and/or (unknown) additional works	\$1,000,000
TOTAL	\$1,000,000

Strengthened governance structure for major early site works

Works will be approved by Staff in accordance with the LOI's existing and proven project governance structure. This governs information sharing, timely joint decision making and oversight of works during the LOI cooperation period. Through the governance structure, NJEDA has the right to review and determine whether to approve all purchase orders and change orders, including with respect to the early site works. PSEG is also required to keep NJEDA informed of material variances between pre-established cost projections and actual internal cost accruals.

The LOI amendment distinguishes Concrete Removal Works and Dewatering Works as “Major Early Site Works Packages”, on account of their anticipated cost and importance to the broader development schedule. Major site works are subject to additional governance requirements, providing the Authority Staff with greater control over the:

- Scope of works to be undertaken;
- Target completion date; and
- Broad fee structure (e.g. cost-plus or fixed price).

Procurement and any contractual terms and conditions will be set by PSEG, consistent with their procurement procedures and standard form contract. Authority Staff, or their agents, will also have regular inspection rights to ensure that works align with the scope and meet requirements.

Remediation obligation – concrete removal

Members should be aware that the Authority's obligations under the LOI amendment in respect to concrete removal include potential remediation costs. PSEG has accepted responsibility for pre-existing site conditions and associated remediation costs, to the extent that remediation is required by state or federal law and assuming no development occurs. Should contamination be discovered that could, but for the development of a Port, be left in place or capped (in-line with regulatory requirements), the Authority will be liable for any remediation costs incurred in remediating the site in order to complete the concrete removal. The Authority's remediation obligation may take effect (and costs be incurred) at a later date, such as following core construction on that parcel, depending on the level of contamination and the required remediation solution (e.g. capping).

A Phase 1 environmental assessment covering the area in which concrete is located (Parcel A) was completed in December 2020; that assessment identified several potential areas of concern (AOC) and found that in-place soils are presumed contaminated at the site due to the presence of historically deposited dredge materials and historic fill. The Authority is presently working with PSEG to determine a prudent level of testing of both concrete and soil. This testing is being jointly scoped after which it will be undertaken by environmental engineering contractor, AKRF. Testing

and analysis of results will be completed prior to concrete removal commencing. Should testing indicate a remediation task in excess of the approved funding then Staff will return to the Board with a recommendation on how to proceed. The LOI amendment stipulates that sub-contractors carrying out major works (concrete removal and dewatering) hold Contractor's Pollution Liability coverage with a limit not less than \$1 million per occurrence, and which shall name PSEG and NJEDA and each of their Affiliates as additional insureds.

LOI reimbursement

At the time that the original LOI took effect in April 2020 it was assumed that the project would be financed in full upfront. Since that time several funding sources have materialized, with the Governor's Fiscal 2022 State Budget proposing \$200 million in funding and the New Jersey Board of Public Utilities (NJBP) committing \$13.2 million; with this commitment passing the NJBP's Board on March 23, 2021. Additional funding sources are expected over the life of the project. Given this shift in the funding-financing mix, a bond issuance is unlikely to occur until early 2022.

In order to reflect the sourcing of project funding (versus financing), and to provide PSEG with certainty on the timing of cost reimbursement, the LOI amendment revises the reimbursement of costs incurred under the LOI to the earlier of (a) NJEDA obtaining financing or a funding appropriation, or (b) the last day of the Cooperation Period; which is extended in the LOI amendment to December 31, 2021. This reimbursement arrangement does not apply to the early works costs incurred by PSEG under the LOI amendment. Per the terms of the amendment, all costs incurred by PSEG in undertaking early works will be reimbursed by the Authority on a monthly invoicing basis. This recognizes that early site works were not originally envisaged to be included under the terms of the LOI, as well as PSEG's preference for earlier repayment.

Project funding approvals to-date

To-date, the Authority's Board has approved \$22.1 million in NJWP project funding as outlined in Table 2 below, comprising initial economic feasibility, professional services, design, permitting and related preconstruction costs. Approval of the LOI amendment and associated funding request for early site works would increase approved funding to-date to \$30.5 million. Board members should note that certain approved funding will extend into 2021 and beyond.

Table 2 – Approved funding to-date

Permitted use	Board approval (\$ million)	Approval status
Economic feasibility	\$0.36	Approved – Jul 2019
Professional services	\$2.55	Approved – Feb 2020
Legal counsel	\$3.75	Approved – March 2020 & Jan 2021
(Current) PSEG LOI	\$7	Approved – June 2020 & Aug 2020
M&N contract	\$7.73	Approved – Sep 2020, Nov 2020 & Mar 2021
ACE feasibility study	\$0.74	Approved – Jan 2021
Early site works	\$8.4	Pending approval
Sub-total (current approvals)	\$22.1	
Sub-total (approvals & pending approvals)	\$30.5	

The Authority’s actual spending on the NJWP project to-date is estimated at \$13.6 million through March 31, 2021, with design/engineering and professional services comprising the two largest cost contributors. Anticipated costs incurred through June 2021 are \$20 million.

RECOMMENDATION

The Members of the Board are asked to approve an amendment to the Authority’s existing Letter of Intent (LOI) with PSEG Nuclear (“PSEG”) regarding the development of the New Jersey Wind Port (NJWP) project. The purpose of the amendment includes:

1/ An expansion of the scope of the LOI to include critical-path early site works and associated permitting and project management costs.

Early site works will be contracted and overseen by PSEG on the Authority’s behalf. Approval of works will be strictly governed in accordance with the existing LOI governance process, with major works⁴ subject to additional oversight by Authority Staff.

Members are asked to approve a not-to-exceed budget of \$8.4 million to cover the cost of critical path early site works outlined in the LOI amendment. This amount includes \$1 million of contingency for change orders and additional related works. The level of contingency reflects certain unknowns at the current time that have the capacity to increase costs. The funding total is based on the sum of estimated costs by activity; however Staff request to reserve the right to reallocate funds across works provided total costs do not exceed the aggregate approval amount.

⁴ Major works are works with an estimated total cost of \$1 million or more

The funding request is additional to the existing \$7 million LOI cap. Members should note that all early site works costs incurred by PSEG under the LOI amendment will be reimbursed by the Authority on a monthly invoicing basis.

2/ An extension of the LOI cooperation period from May 31, 2021 until December 31, 2021. This will allow for the completion of early site works under the LOI. The cooperation period will cease sooner if early works are completed prior to this date;

3/ A clarification of the timing of reimbursement by the Authority for costs incurred by PSEG under the LOI, excluding early site works costs, to the earlier of the cooperation period expiration date (December 31, 2021), or the Authority securing financing or a funding appropriation. Currently, this requirement is more narrowly defined in the LOI as the earlier of the cooperation period expiration date or financial close.

The LOI amendment is necessary to preserve the current target of commencing core construction in Quarter 4 2021; and target completion of Phase 1 of the project in Quarter 1 2024.

Staff anticipate executing a Ground Lease with PSEG covering all Phase one parcels by no later than June 30, 2021. If a Ground Lease is not in place by June 30, 2021, Staff will instruct PSEG to cease early site works. This condition aims to cap the Authority's cost exposure prior to securing property rights. Staff will update the Board on lease progress at the time of the May meeting.

Approval of the LOI amendment and early works budget will increase the Authority's approved funding to-date for the New Jersey Wind Port (NJWP) project to \$30.5 million; of which \$15.5 million is attributable to (anticipated) PSEG cost reimbursement. The Authority's actual spending on the NJWP project to-date is estimated at \$13.6 million through March 31, 2021.



Tim Sullivan, CEO

Prepared by: Jonathan Kennedy, Dennis Feeney

Attachment A – Summary of early site works

Concrete Removal – In the course of due diligence, it was observed that Parcel A, the site of the marshalling port, has concrete through an unknown portion of the site. In September 2020, NJEDA commissioned Moffatt & Nichol to perform a geophysical survey to determine the extent of concrete deposits. The survey identified approximately 115,000 cubic yards (CY) of concrete throughout the 13-acre parcel, which is understood to date from an on-site concrete batch plant used during the construction of the nuclear plant. This subsurface concrete needs to be cleared out in order for proper drainage to be installed at the site, as well as to enable site stabilization. A given portion of the concrete can be cleared out prior to environmental permitting due to the parcel being a confined disposal facility (CDF). The scope of this work will include a) removal of the below ground concrete and any above ground concrete from Area A, b) transportation of the removed concrete to a designated storage area site on Area E, c) potential crushing of the concrete for future use as DGA, d) separation and disposal of other non-concrete material (e.g. rebar), and e) filling the holes in Area A with excavated soils; and f) potential relocation off-site.

Duration of Work – Approximately 4 – 6 months

Estimated Cost – \$5 million

CDF 3 Dewatering – The U.S. Army Corps of Engineers’ Confined Disposal Facility 3, which is identified in the Authority’s concept plan as Parcel B (part of Phase 2 of the Port’s development), is the subject of a land swap between PSEG and the USACE. The land swap, which has been underway since 2012, is expected to execute by July of this year.

The property is intended as the source of material that will be used for the surcharging of Parcel A (the marshalling port). Monitoring wells installed on the property by the Authority’s engineer-of-record, Moffatt & Nichol, have identified that the groundwater level in CDF 3 is too high to yield usable material; with dewatering required. In order to lower the groundwater level of CDF 3, a series of trenches will need to be dug throughout the approximately 99-acre CDF that would direct groundwater to two pumps, one in the north and one in the south of the property. As well as digging the trenches a contractor will need to monitor and maintain the trenches through the duration of the work, monitor the water to ensure that it is running clear, and fill in the ditches following dewatering. This scope of work has been reviewed and approved by the USACE. As it falls within the bounds of routine CDF maintenance, no additional permits are required.

Duration of Work – 4 – 6 months

Estimated Cost – \$1 million

CDF 3 Dewatering Monitoring – The dewatering effort outlined above will require third-party monitoring to determine that environmental regulations are being properly observed. PSEG has secured an estimate from its environmental engineers, AKRF, to provide these services.

Duration of Work – 4 – 6 months

Estimated Cost – \$25,000

NJ Wind Port Settlement Analysis – Prior to the Authority’s CMAR commencing with the surcharge of earthworks in Parcel A, PSEG is requiring that its nuclear engineers, Sargent & Lundy, conduct a settlement analysis to investigate the potential of the surcharging program to cause down drag on the cooling tower and/or administration building piles. This analysis will determine whether the surcharge program represents an adverse impact on the nuclear plant’s structures or the recently installed Silver Run buried cables and associated transmission tower foundations or other utilities. This work is being included as early works because it is a prerequisite for the CMAR to begin surcharging Parcel A.

Duration of Work – 14 weeks

Estimated Cost - \$142,500

Services building/Firing Range permitting – Relocation of existing nuclear facilities currently occupying the Authority’s proposed lease area is a critical path item. In order to ensure that facility relocation completes on time and does not delay the development of the Port, AKRF needs to begin preparing applications for NJDEP Land Use permits for submission.

Duration of Work – 9 months

Estimated Cost - \$151,300

Beneficial Reuse Permitting – Under the current LOI, PSEG contracted with AKRF to identify potential locations where future dredge spoils could be placed, other than on Parcel B, with a focus on wetlands improvement and/or habitat restoration. This analysis serves several important purposes. Firstly, by using the dredge spoils for projects that benefit local habitats, NJEDA is mitigating the Port’s potential environmental impact. Secondly, if NJEDA can move some of the dredge spoils offsite to a restoration site, it can lessen or avoid CDF berm construction costs and, potentially and subject to future market demand, accelerate the development of Parcel B. Lastly, NJEDA needs to understand options of where dredge spoils could be placed once the Port is operational, recognizing the significant ongoing maintenance dredge task.

AKRF’s initial analysis identified a number of potential sites where dredge spoils may be able to be deposited. This additional scope of works will enable AKRF to begin scoping permitting requirements and preparing permit packages for beneficial reuse projects that it has identified.

Duration of Work – 7 months

Estimated Cost – \$250,000

PSEG procurement support – PSEG intends to seek expert support for safety planning, procurement and scheduling of works at the nuclear site.

Duration of Work – 2 – 3 months

Estimated Cost – \$25,000

**Attachment B –
Proposed seventh amendment to the Letter of Intent with PSEG**

SEVENTH AMENDMENT TO THE LETTER OF INTENT

THIS SEVENTH AMENDMENT TO LETTER OF INTENT, made as of this [●]th day of April 2021 (this “AMENDMENT”) between PSEG Nuclear LLC, a New Jersey corporation having its principal office at 80 Park Plaza, Newark, New Jersey, 07102, hereinafter referred to as “PSEG”, and THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY, a body corporate and politic organized and existing under the laws of the State of New Jersey, with its principal offices located at 36 West State Street, Box 990, Trenton, New Jersey 08625, hereinafter referred to as “NJEDA” (together with PSEG, the “Parties”).

WHEREAS, on April 16, 2020, the Parties executed a Letter of Intent (“Original LOI”) that set forth how PSEG and the NJEDA had determined to cooperate in their efforts to develop an Off-Shore Wind Port at Lower Alloways Creek (“Port”), on June 23, 2020, the Parties executed a First Amendment to Letter of Intent to extend the date of the Cooperation Period, as defined therein, to September 30, 2020 (“First Amendment”), on August 18, 2020, the Parties executed a Second Amendment to Letter of Intent to increase the maximum reimbursement to PSEG (“Second Amendment”), on September 25, 2020, the Parties executed a Third Amendment to Letter of Intent to extend the date of the Cooperation Period, as defined therein, to November 30, 2020 (“Third Amendment”), on November 30, 2020, the Parties executed a Fourth Amendment to Letter of Intent to extend the date of the Cooperation Period, as defined therein, to January 31, 2021 (“Fourth Amendment”), on January 26, 2021, the Parties executed a Fifth Amendment to Letter of Intent to extend the date of the Cooperation Period, as defined therein, to March 31, 2021 as well as to revise Exhibit F of the LOI to reflect certain developments including the execution of a definitive agreement by an affiliate of PSEG to acquire an equity interest in the Ocean Wind project and PSEG’s assignment of the Moffatt & Nichol agreement to NJEDA (“Fifth Amendment”), and on March 23, 2021, the Parties executed a Sixth Amendment to Letter of Intent to extend the date of the Cooperation Period, as defined therein, to May 31, 2021 (“Sixth Amendment” and together with the Original LOI, First Amendment, Second Amendment, Third Amendment, Fourth Amendment and Fifth Amendment, the “LOI”);

WHEREAS, under the LOI, the Parties have made good progress in advancing the development of the Port, leading to a clearer definition of the size and timing of the development of the Port;

WHEREAS, PSEG has agreed to use reasonable efforts to perform, or cause to be performed, certain Early Site Works with respect to the Site and NJEDA has agreed to reimburse PSEG for such Early Site Works in accordance with the terms and conditions contained herein;

WHEREAS, NJEDA’s target of commencing core construction in 2021 necessitates that Early Site Works be commenced, and certain Early Site Works be completed, prior to execution of Definitive Documentation; and

WHEREAS, the Parties are in the process of negotiating Definitive Documentation the provisions of which will, upon execution, supersede the provisions of the LOI as amended by this Amendment, except to the extent such provisions relate to the Early Site Works or reimbursement of PSEG Project Costs, as further described herein.

NOW, THEREFORE, intending to be legally bound as described below, and for adequate consideration, PSEG and NJEDA hereby agree as follows:

SECTION 1. AMENDMENTS TO DEFINITIONS

- A. The Definitions in this Amendment shall be the same as in the LOI, with the exception of the following, which will replace the definition in the LOI:

“Cooperation Period” means the period commencing on the execution of the Original LOI and ending on December 31, 2021.

- B. The LOI is amended to include the following new Definitions:

“Additional Early Site Works” means any additional Early Site Works that PSEG and NJEDA mutually agree are required to be performed by PSEG to support the development of the Port.

“Early Site Works” means those works described in Exhibit G (Early Site Works) and any Additional Early Site Works.

“Early Site Works Costs” means all internal and external costs incurred by PSEG or its representatives after execution of this Amendment that directly relate to the Early Site Works, which shall not exceed the “Total” set forth in Exhibit G (Early Site Works), unless approved in writing by NJEDA in its sole discretion.

“Major Early Site Works Package” means each of the following packages of Early Site Works (i) removal of subsurface concrete from Parcel A, (ii) dewatering of Parcel B, and (iii) any other package of Early Site Works as may be mutually agreed by the Parties, that will be procured by PSEG in accordance with Section 20.B and otherwise governed by the terms of the LOI as amended by this Amendment.

SECTION 2. AMENDMENT TO AGREEMENT TO NEGOTIATE IN GOOD FAITH

The section of the LOI entitled “Agreement to Negotiate in Good Faith” is amended as follows:

- A. During the Cooperation Period, the Parties will negotiate in good faith to execute final binding agreements (“Definitive Documentation”) that will memorialize the roles of the Parties in the Project, except with respect to the Early Site Works and reimbursement of the PSEG Project Costs, which shall be governed by the LOI as amended by this Amendment. The Parties acknowledge that the obligation to negotiate in good faith (and therefore to subsequently enter into Definitive Documentation) is subject to the various conditions set forth herein.
- B. At any time during or following the termination of the Cooperation Period, each of the Parties may determine to execute Definitive Documentation or extend the term of the Cooperation Period through the execution of a subsequent letter of intent.
- C. PSEG and its affiliates shall work exclusively with NJEDA and its affiliates in respect of the Project, and shall not work with or have discussions with any other party (i) in connection with any other potential project that would utilize the Site during the Cooperation Period and (ii) for four years after the termination of the Cooperation Period (the “Restricted Period”), in connection with any other project for the development of a port facility at the Site, provided that in each case, the restrictions set forth in this paragraph shall not apply with respect to any projects that relate to the existing facilities at or utilizing the Site, any existing land use or any requirements, orders or actions of the Nuclear Regulatory Commission or other regulatory agency or political or quasi-political body relating to the Site; provided, further, that the restrictions set forth in clause (ii) of this paragraph shall cease to apply if, during the Restricted Period, PSEG offers to NJEDA the opportunity to enter into good faith negotiations regarding participation in a potential project materially

similar to the Project utilizing the Site, NJEDA fails to, within 90 days, notify PSEG in writing of its commitment to participate in such project.

D. Survival.

- (i) If the Parties execute Definitive Documentation, the provisions of the Definitive Documentation will supersede the LOI as amended by this Amendment and the provisions of the LOI as amended by this Amendment will no longer be legally binding on the Parties, except to the extent such provisions relate to (a) the Early Site Works and Early Site Works Costs, and (b) the reimbursement of PSEG Project Costs. For the avoidance of doubt, the obligations on the Parties contained in Sub-Section C of this Section 3 (Agreement to Negotiate in Good Faith), Section 4 (Steering Committee), Section 5 (Information Sharing), Section 7 (Right to Access), Section 10 (Conflicts of Interest), Section 13 (Reimbursement), Section 15 (Open Public Records Act), Section 16 (Confidentiality), Section 17 (Compliance), Section 18 (Prevailing Wage and Project Labor Agreements), and Section 19 (General) shall be legally binding on the Parties following execution of Definitive Documentation until the last day of the Cooperation Period, to the extent applicable to the Early Site Works or as required for the reimbursement of PSEG Project Costs in accordance with Section 13 (Reimbursement).
- (ii) If at the end of the Cooperation Period, the Parties have not executed Definitive Documentation the obligations on the Parties contained in (a) Section 9 (No Priority), Section 13 (Reimbursement), Section 16 (Confidentiality), Section 17 (Compliance), and Sub-Sections A, B, D, E, and H of Section 18 (Prevailing Wage) and Section 19 (General) of this Agreement shall survive until the second anniversary of the Cooperation Period, and (b) Sub-Section C of this Section 3 (Agreement to Negotiate in Good Faith) shall survive after the Cooperation Period for four years after the termination of the Cooperation Period.

SECTION 3. AMENDMENT TO STEERING COMMITTEE

The section of the LOI entitled “Steering Committee” is amended as follows:

The Parties will define a Project governance structure before April 15, 2020, such as a steering committee, to ensure information sharing, timely joint decision making, and oversight of the Project during the Cooperation Period. Through the governance structure, the NJEDA will have the right to review and determine whether to approve all material purchase orders for external cost items, including with respect to the Early Site Works, which approval shall not be unreasonably withheld if the services or goods to be obtained through the purchase order will facilitate the timely development of the Project, and which approval shall be irrevocable after such purchase order is issued, unless (i) either Section 20.F or Section 20.G(iv) applies, or (ii) termination of a purchase order is permitted under a contractor’s agreement without recourse to PSEG and provided that payment has not been made on the purchase order. PSEG will keep NJEDA informed of material variances between the monthly internal cost projections included in Exhibit C and Exhibit G and actual internal cost accruals.

SECTION 4. AMENDMENT TO REIMBURSEMENT

Sub-Section C of the section entitled “Reimbursement” in the LOI is amended as follows:

- C. If (i) the Project does not proceed for any reason other than PSEG’s material breach of this agreement (in which case NJEDA shall not be obligated to pay any PSEG Project Costs), NJEDA will pay 100% of PSEG Project Costs to date plus Interest Per Annum, capped at \$7 million, on the last day of the Cooperation Period, or (ii) the Project proceeds and the Parties execute Definitive Documentation, NJEDA will pay 100%

of PSEG Project Costs to date plus Interest Per Annum, capped at \$7 million, on the earlier to occur of (a) NJEDA obtaining financing or appropriated funding becoming available, or (b) the last day of the Cooperation Period; provided, in each case, that the PSEG Project Costs are approved in accordance with the governance structure set out in the LOI.

The following new Sub-Section F is added to the section entitled “Reimbursement” in the LOI:

- F. For the avoidance of doubt, (i) the PSEG Project Costs will not include any Early Site Works Costs, and (ii) following execution of Definitive Documentation, additional PSEG Project Costs will be limited to those costs that are the subject of a purchase order approved in accordance with the governance structure set out in the LOI prior to execution of this Amendment.

SECTION 5. NEW SECTION: EARLY SITE WORKS

The LOI is amended to include the following new section titled “Early Site Works”:

SECTION 20. EARLY SITE WORKS

- A. **Early Site Works.** PSEG agrees to use reasonable efforts to perform, or cause to be performed, the Early Site Works by the planned completion dates contemplated in Exhibit G (Early Site Works) (where applicable). The Parties acknowledge and agree that the dates set out in Exhibit G (Early Site Works) represent the Parties’ good faith estimate of the anticipated schedule for completion of the Early Site Works, and may be amended by mutual agreement of the Parties through the governance structure contemplated in Section 4 of the LOI as amended by this Amendment. NJEDA acknowledges that any failure by PSEG to complete the Early Site Works by the dates contemplated in Exhibit G (Early Site Works), despite its exercise of reasonable efforts, shall not constitute a breach of the LOI as amended by this Amendment by PSEG.
- B. **Procurement of Major Early Site Works Packages.**
- (i) PSEG will procure the Major Early Site Works Packages, with input from NJEDA as contemplated herein.
 - (ii) Prior to issuing any procurement for a Major Early Site Works Package, the Parties will work together to prepare procurement documents that will include (a) the scope of works included in such Major Early Site Works Package which will be prepared by NJEDA, (b) a target date for completion of the Major Early Site Works Package that will be mutually acceptable to both Parties, and (c) the fee structure for the contract, such as a fixed price or time and materials basis, that will be mutually acceptable to both Parties. Without prejudice to Section 20.A above, the Parties acknowledge that the actual dates of completion under each contract for the Major Early Site Works Packages may vary due to the procurement schedule, NJEDA purchase order approvals, and duration or change in scope.
 - (iii) To the extent that any Early Site Works extend beyond the end of the Cooperation Period, the Cooperation Period may be extended by mutual agreement of the Parties.
 - (iv) PSEG will keep NJEDA informed of the progress of any procurement for a Major Early Site Works Package and provide NJEDA with such further information with respect to the procurement as NJEDA may reasonably request. Upon request, PSEG will provide NJEDA a copy of each executed Major Early Site Works Package contract.

- (v) The Parties will use good faith efforts to carry out their obligations under this Section 20.B so as to meet the planned completion dates contemplated in Exhibit G (Early Site Works) (as may be amended from time to time).
 - (vi) PSEG will, in consultation with NJEDA, use reasonable efforts to administer and enforce each contract for the Major Early Site Works Packages as may be reasonably requested by NJEDA and that is consistent with the terms of such contracts. If NJEDA incurs costs, losses or liability as a result of a breach of a contract for a Major Early Site Works Package and PSEG recovers any amounts in respect of PSEG's enforcement of such contract, PSEG will promptly turn over to NJEDA any amounts in excess of any costs, losses or liability incurred by PSEG as a result of such breach. In the event that PSEG is unable to recover any or all amounts through the enforcement of a Major Early Site Works Package contract, NJEDA shall reimburse PSEG for any shortfall. Any costs incurred by PSEG in carrying out administration or enforcement in accordance with this Section 20.B(vi) will be reimbursed by NJEDA as Early Site Works Costs.
 - (vii) The Parties agree that work under the Major Early Site Works Package contract with respect to removal of subsurface concrete from Parcel A will not commence until such testing as the Parties mutually agree to (acting reasonably) has been completed.
- C. **Access.** In accordance with Section 7 of the LOI (and subject to the terms therein) and subject to Section 20.D below, PSEG will grant NJEDA, and its representatives and agents, access to the Site as is reasonably requested by NJEDA in order to observe the Early Site Works.
- D. **Insurances.** During the Cooperation Period, the Parties shall maintain the insurances set out in Exhibit H (Insurance Requirements). NJEDA acknowledges that the limits listed herein are lower than the standard terms and conditions approved by PSEG for its contracts and subcontractors, and therefore, PSEG reserves the right to require more stringent insurance requirements in accordance with its standard terms and conditions. PSEG reserves the rights to self-insure the requirements set out in Exhibit H (Insurance Requirements).
- E. **[Environmental Liability. [●]]**⁵
- F. **Termination of Definitive Documentation.** If the Parties execute Definitive Documentation, and NJEDA subsequently terminates the Definitive Documentation in accordance with the terms set forth therein (i) NJEDA will have the right to terminate any purchase order with respect to the Early Site Works, provided that NJEDA reimburses PSEG for any costs incurred by PSEG to the relevant contractor directly as a result of such termination, including demobilization costs, (ii) NJEDA will reimburse PSEG for any outstanding Early Site Works Costs, and [(iii) subject to Section 20.E above, NJEDA will be liable for the costs of restoring the site on which any Early Site Works have been performed to a condition agreed with PSEG (both Parties acting reasonably) which shall be, at a minimum, equivalent to the condition immediately prior to commencement of such Early Site Works]. NJEDA will reimburse PSEG for the costs contemplated in this Section 20.F within 30 days of receipt of a complete invoice and the supporting documentation contemplated in Section 20.G(iii).
- G. **Early Site Works Costs.**
- (i) A current breakdown of anticipated Early Site Works Costs is set out in Exhibit G (Early Site Works).

⁵ **Note:** To be inserted upon finalization – currently being negotiated with PSEG.

- (ii) The Early Site Works Costs will be reviewed and approved by NJEDA in accordance with Section 4 of the LOI as amended by this Amendment.
- (iii) PSEG will be reimbursed for the performance of the Early Site Works on an ongoing basis. PSEG will submit an invoice in the form attached as Exhibit I (Early Site Works Invoice Form) and the following supporting documentation to NJEDA each month following commencement of the Early Site Works: (a) copies of the invoices received from any contractor performing Early Site Works, (b) a record of internal costs in the form set out in Appendix A of Exhibit I (Early Site Works Invoice Form), and (c) invoices for other fees and costs to be reimbursed. NJEDA will reimburse PSEG for the Early Site Works Costs within 30 days of receipt of each complete monthly invoice; provided, in each case, that the Early Site Works Costs (excluding any internal costs) are the subject of a purchase order approved in accordance with the governance structure set out in the LOI as amended by this Amendment.
- (iv) If the Project does not proceed due to a material breach of the LOI as amended by this Amendment by PSEG, including PSEG's obligation to use its commercially reasonable efforts to pursue the Project, NJEDA will have the right to terminate any purchase order with respect to the Early Site Works, provided that PSEG will be reimbursed for any costs incurred to date under an approved purchase order and for any demobilization costs.

SECTION 6. NEW EXHIBITS

The LOI is amended to include the new Exhibits "G", "H" and "I", each as attached to this Amendment.

SECTION 7. GENERAL

A. This Amendment will be governed by New Jersey law.

B. Notices shall be made by e-mail or certified mail:

To NJEDA:

36 West State Street P.O. Box 990 Trenton, NJ 08625

ATT'N: Brian Sabina, SVP, Office of Economic Transformation bsabina@njeda.com

To PSEG:

ATT'N: Kate Gerlach, Director Generation Development, PSEG Power LLC kathryn.gerlach@pseg.com

Michael Hyun, Deputy General Counsel and Corporate Secretary michael.hyun@pseg.com

- C. This Amendment may be executed in counterparts. The effective date hereof will be the final date of execution by both Parties.
- D. This Amendment shall not be construed to create any rights on behalf of any party other than the PSEG and NJEDA. Neither this Amendment nor any rights or duties may be assigned or delegated by either party hereto without the written consent of the other party and any such purported assignment or delegation shall be null and void and of no force or effect.
- E. NJEDA may assign this Amendment to any government entity of the State of New Jersey for the purpose of pursuing the Project by notifying PSEG two weeks in advance. PSEG may not assign the Amendment without NJEDA's prior written consent, except to an entity that controls, is controlled by, or under common control with, PSEG Nuclear LLC.

- F. By execution, delivery, and performance of this Amendment, each Party represents to the other that it has been duly authorized by all requisite action on the part of the PSEG and the NJEDA, respectively. This Amendment constitutes the legal, valid, and binding obligation of the parties hereto.
- G. If any provision of this Amendment shall be such as to destroy its mutuality or to render it invalid or illegal, then, if it shall not appear to have been so material that without it this Amendment would not have been made by the parties, it shall not be deemed to form a part hereof but the balance of this Amendment shall remain in full force and effect.
- H. This Amendment is subject to the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 and the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq.
- I. The entire agreement between the Parties is contained in the Amendment and in the LOI, and no change in or modification, termination, or discharge of this Amendment shall be effective unless in writing and signed by the Party to be charged therewith. No waiver, forbearance or failure by any Party of its rights to enforce any provision of this Amendment shall constitute a waiver or estoppel of such Party's right to enforce any other provision of this Amendment or a continuing waiver by such Party of compliance with any provision.
- J. Except as amended in this Amendment, the LOI shall remain in full force and effect in accordance with its terms.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be signed, sealed, and attested.

WITNESS: NEW JERSEY ECONOMIC DEVELOPMENT
AUTHORITY

By: _____	By: Tim Sullivan
	Title: Chief Executive Officer
Date: _____	Date: _____

WITNESS: PSEG NUCLEAR LLC

By: _____	By: _____
Title: _____	Title: _____
Date: _____	Date: _____

EXHIBIT G

EARLY SITE WORKS

Scope of Work	Major Early Site Works Package (Y/N)	Estimated cost	Contractor selection	Planned completion date
Permitting support for PSEG facility relocation	N	\$151,300	AKRF (PSEG's permitting advisor)	12/31/21
Permitting support associated with beneficial reuse (of dredge) evaluation	N	\$250,000	AKRF	12/31/21
Area B Dewatering Monitoring	N	\$25,000	AKRF	12/31/21
Removal of subsurface concrete from Parcel A	Y	\$5,000,000	To be contracted by PSEG	10/1/21
Dewatering of Parcel B	Y	\$1,000,000	To be contracted by PSEG	12/31/21
Settlement analysis	N	\$142,500	S&L (PSEG's existing contractor)	9/1/21
Outsourced safety planning and works coordination	N	\$25,000	To be contracted by PSEG	10/1/21
Internal labor	N	\$700,000.00	N/A	12/31/21
Miscellaneous permitting fees	N	\$100,000.00	N/A	12/31/21
TOTAL		\$7,393,800		

EXHIBIT H

INSURANCE REQUIREMENTS

- (a) NJEDA and PSEG shall provide and maintain, and shall require any of their contractors and/or subcontractors, to obtain and maintain in effect during the Cooperation Period minimum insurance coverage with carriers satisfactory (A-/VII or better in the Best's Key Rating Insurance Guide) to the other Party as follows:
 - (i) Workers' Compensation Insurance with statutory limits and employer's liability insurance with limits of not less than One Million (\$1,000,000) Dollars per occurrence;
 - (ii) where NJEDA or PSEG (as applicable) or any of their contractors and/or subcontractors are carrying out physical construction only, Commercial General Liability Insurance providing premises liability, bodily injury, property damage, blanket contractual liability, products/completed operations, independent contractors, broad form property damage and coverage for explosion, collapse and underground hazards (XCU) with a limit of liability of not less than One Million (\$1,000,000) Dollars per occurrence and per project or location aggregate. The completed operations coverage shall remain in place for not less than three (3) years from the last day of the Cooperation Period or from the date of termination of the Amendment, if applicable;
 - (iii) Automobile Liability Insurance for owned, non-owned and hired automobiles with a combined single limit of not less than One Million (\$1,000,000) Dollars per accident; and
 - (iv) Excess or Umbrella Liability Insurance with a limit of not less than Three Million (\$3,000,000) Dollars per occurrence and project or per location aggregate. These limits apply in excess of employer's liability, commercial general liability and automobile liability coverage mentioned above.
- (b) PSEG shall require each of their contractors and/or subcontractors carrying out Early Site Works to obtain and maintain in effect during the Cooperation Period with carriers satisfactory (A-/VII or better in the Best's Key Rating Insurance Guide) to NJEDA, Contractor's Pollution Liability coverage with a limit not less than One Million (\$1,000,000) Dollars per occurrence and which shall name PSEG and NJEDA and each of their Affiliates as additional insureds and provide that this coverage is primary to any other insurance carried by PSEG or NJEDA or each of their Affiliates, and without right of contribution from insurance carried by PSEG or NJEDA, or any of their agents or representatives.
- (c) All coverage noted in (a) above, with the exception of workers' compensation: (i) with respect to coverages held by NJEDA or its contractors and/or subcontractors, shall name PSEG and its Affiliates as additional insureds and provide that this coverage is primary to any other insurance carried by PSEG or its Affiliates, and without right of contribution from insurance carried by NJEDA, NJEDA agents or representatives; shall contain standard cross-liability provisions; and shall provide for a waiver of all rights of subrogation which NJEDA agents or representatives and/or NJEDA's insurance carrier might exercise against PSEG; and (ii) with respect to coverages held by PSEG or its contractors and/or subcontractors, shall name NJEDA and its Affiliates as additional insureds and provide that this coverage is primary to any other insurance carried by NJEDA or its Affiliates, and without right of contribution from insurance carried by any PSEG, PSEG agents or representatives; shall contain standard cross-liability provisions; and shall provide for a waiver of all rights of subrogation which PSEG agents or representatives and/or PSEG's insurance carrier might exercise against NJEDA.

- (d) Prior to work commencing on the Site, each of NJEDA and PSEG shall deliver certificates of insurance to the other Party evidencing that the required coverages are in effect.

EXHIBIT I

EARLY SITE WORKS INVOICE FORM



Invoice Approval	
Transmittal	
Date Sent:	

**New Jersey Wind Port – Early Site Works
Invoice Document**

Invoice Reference			
Date of submittal to NJEDA:		Time:	
PSEG Representative:		NJEDA Representative:	
		Delivery Method:	

Notes, Decisions and Issues

This invoice represents all of the PSEG internal and subcontractor charges paid through the end of [Month].

Table 1 – Summary of Cost

[Month] PSEG Internal Cost	
[Month] PSEG External Cost	
Total [Month]	
Previous Total:	
Total Project To Date	

The appendices below provides the cost breakdown for each section and supporting documentation.

Appendices:

Appendix A – Summary of [Month] Costs

Appendix B – Invoices

Appendix A

Table A-1_ PSEG Internal & Contractor Charges*

PSEG Internal Costs for NJWP										
Name	Project Role	Notes	2019 Total	2020 Total	Jan-21	Feb-21	Mar-21	Apr-21	Total 2021	Project To Date
Kathryn Gerlach	Project Director		\$ 10,615.80	\$ 53,372.55	\$ 717.65	\$ 717.65			\$ 1,435.30	\$ 65,423.65
Dave Derlin	PM		\$ -	\$ 162,023.61	\$ 17,413.50	\$ 23,482.25			\$ 40,895.75	\$ 202,919.36
Heidi Sanchez	PM		\$ -	\$ 57,441.02	\$ 4,134.90	\$ 12,290.15			\$ 16,425.05	\$ 73,866.07
Dave Hinchey	Permitting		\$ 10,938.00	\$ 67,768.60	\$ 8,920.78	\$ 1,305.48			\$ 10,226.26	\$ 88,932.86
Thomas Patterson	Permitting		\$ -	\$ 83,629.96	\$ 10,056.20	\$ 12,015.20			\$ 22,071.40	\$ 105,701.36
Robert Gallaher	Nuclear PM		\$ 1,191.02	\$ 66,271.16	\$ 2,322.40	\$ 3,831.96			\$ 6,154.36	\$ 73,616.54
Jamie Mallon	Nuclear - ENG		\$ -	\$ 69,646.24	\$ 6,730.08	\$ 8,652.96			\$ 15,383.04	\$ 85,029.28
Wendy Cronrath	Nuclear Support - Cost		\$ -	\$ 13,329.71	\$ 2,551.77	\$ 2,551.77			\$ 5,103.54	\$ 18,433.25
Thomas Green	Nuclear Field Oversight (LIR)		\$ -	\$ 65,589.23	\$ 9,409.55	\$ 9,409.55			\$ 18,819.10	\$ 84,408.33
Glenn Schwartz	Nuclear Support - ENG		\$ -	\$ -	\$ 371.20	\$ 2,227.20			\$ 2,598.40	\$ 2,598.40
Kurt Sorensen	ENG		\$ -	\$ 43,669.74	\$ 269.76	\$ 359.68			\$ 629.44	\$ 44,299.18
Brandon Thomas	Procurement		\$ -	\$ 5,584.95	\$ 1,235.84	\$ -			\$ 1,235.84	\$ 6,820.79
Other Temp Support	Detailed in 2019/2020 I-005 Package		\$ 18,240.96	\$ 101,589.03						\$ 119,829.99
Payroll Taxes & Fringe	Overhead Costs		\$ 5,178.84	\$ 69,501.17	\$ 7,581.16	\$ 6,709.12			\$ 14,290.28	\$ 88,970.29
Total			\$ 46,164.62	\$ 859,416.97	\$ 71,714.79	\$ 83,552.97				
Internal Labor Cumulative Total			\$ 46,164.62	\$ 905,581.59	\$ 977,296.38	\$ 1,060,849.35				\$ 1,060,849.35

* Table included as an example only. To be updated prior to issuance of each invoice.

Table A-2_ PSEG External Charges & Project Total*

PSEG External Costs for NJWP										
Name	Description	Notes	2019 Total	2020 Total	Jan-21	Feb-21	Mar-21	Apr-21	Total 2021	Project to Date
M&N Engineering Support	Preliminary & Detail Contract		\$ -	\$ 2,695,281.00					\$ -	\$ 2,695,281.00
AKRF Licensing Support		Invoiced Through 10/30/2020	\$ -	\$ 677,458.00	\$ 43,177.90				\$ 43,177.90	\$ 720,635.90
Nuclear Studies & Site Prep			\$ -	\$ 675,064.37	\$ 25,692.50	\$ 39,528.50			\$ 65,221.00	\$ 740,285.37
Survey Support			\$ -	\$ 11,785.00					\$ -	\$ 11,785.00
Phase 1A Application Fees	NJDEP, DRBC		\$ -	\$ 155,183.00	\$ 1,500.00				\$ 1,500.00	\$ 156,683.00
Total			\$ -	\$ 4,214,771.37	\$ 70,370.40	\$ 39,528.50	\$ -	\$ -		
External Services Cumulative Total			\$ -	\$ -	\$ 4,285,141.77	\$ 4,324,670.27				\$ 4,324,670.27
Project Total			\$ 46,164.62	\$ 5,074,188.34	\$ 142,085.19	\$ 123,081.47				
Project Cumulative Total			\$ 46,164.62	\$ 5,120,352.96	\$ 5,262,438.15	\$ 5,385,519.62				\$ 5,385,519.62

* Table included as an example only. To be updated prior to issuance of each invoice.

Appendix B – Invoices*

Line	Invoice Date	Services Through	NJEDA PO Form	PSEG PO Number / Description	Invoiced Status	Amount
1	2/18/21	01/31/21	P3A1+P18+P31	5000027615_Combo Shop Relocation _Change Order	Paid	\$17,740
2	2/18/21	01/31/21	P1A1	5000027616_Hazard Evaluation	Paid	\$3,408
3	2/18/21	01/31/21	P20	5000030458_Safer Area DCP	Paid	\$1,229.50
4	2/01/21	01/31/21	P22 +P22C1	5000030607_MLEA 50.59 Evaluation	Paid	\$11,840
5	2/18/21	01/31/21	P29 Task 1	5000032793_SSB & Target Ranger Permitting Support	Paid	\$1,387
6	2/18/21	01/31/21	P29 Task 2	5000032794_Geotechnical Investigation	Paid	\$3,924
Total:						\$39,528.50

** Table included as an example only. To be updated prior to issuance of each invoice and copies of each invoice to be attached.*