



MEMORANDUM

TO: Members of the Authority

FROM: Timothy Sullivan
Chief Executive Officer

DATE: June 9, 2021

SUBJECT: Agenda for Board Meeting of the Authority June 9, 2021

Notice of Public Meeting

Roll Call

Approval of Previous Month's Minutes

CEO's Report to the Board

COVID19

Authority Matters

Office of Economic Growth

Incentives

Bond Projects

Loans/Grants/Guarantees

Board Memoranda

Public Comment

Adjournment

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

May 12, 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; Elizabeth Dragon 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, Marcia Marley, Robert Shimko, First Alternate Public Member; and Rosemari Hicks, Second Alternate Public Member.

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

Members of the Authority absent: Public Member Massiel Medina Ferrara.

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

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

MINUTES OF AUTHORITY MEETING

The next item of business was the approval of the April 14, 2021 meeting minutes. A motion was made to approve the minutes by Mr. Dumont, seconded by Commissioner Caride, and was approved by the 12 voting members present.

Mr. Alagia had not yet joined the meeting.

Chairman Quinn abstained because he was absent from the meeting.

The next item of business was the approval of the April 14, 2021 executive session meeting minutes. A motion was made to approve the minutes by Ms. Bauer, seconded by Commissioner Caride, and was approved by the 11 voting members present.

Mr. Alagia had not yet joined the meeting.

Chairman Quinn abstained because he was absent from the meeting.

Ms. Dragon abstained because she was absent from the meeting.

Mr. Alagia joined the meeting at this time.

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.

ECONOMIC RECOVERY ACT

EMERGE Program

ITEM: Special Adopted New Rules and Concurrent Proposed New Rules Emerge Program (N.J.A.C. 19:31-22)

REQUEST: To approve (1) The special adopted new rules and concurrent proposed new rules for the new Emerge Program and to authorize staff to (a) submit the special adopted new rules and concurrent proposed program rules for promulgation in the New Jersey Register, and (b) submit the proposed program rules as final adopted rules for promulgation in the New Jersey Register if no formal comments are received, subject to final review and approval by the Office of the Attorney General and the Office of Administrative Law; to final review and approval by the Office of the Attorney General and the Office of Administrative Law; and (2) The creation of the Emerge Program, a tax incentive program authorized by the New Jersey Economic Recovery Act of 2020 to encourage economic development, targeting the Governor's priority sectors through job creation and the retention of a significant number of jobs.

MOTION TO APPROVE: Ms. Bauer **SECOND:** Ms. Brennan **AYES: 14**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 1

ECONOMIC GROWTH

NJ Ignite Pilot Program

ITEM: NJ Ignite Pilot Program Update

REQUEST: To approve the implementation of compliance remediation actions to provide support and opportunity for struggling approved collaborative workspaces; and to approve the update of the NJ Ignite Pilot program benefits and program rules to closely incorporate the NJ Ignite Legislation components; and to approve the revision of Delegated Authority to be consistent with NJEDA staffing changes.

MOTION TO APPROVE: Mr. Alagia **SECOND:** Commissioner Angelo **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 2

Ms. Hicks abstained because she is the CEO and owner of a co-working space.

CLEAN ENERGY

ITEM: NJ Wind Turbine Tech Training Challenge

REQUEST: To approve the creation of the NJ Wind Turbine Tech Training Challenge, a competitive grant program to award a grant of up to \$1,000,000 to a New Jersey community college to establish an offshore wind turbine technician training program, and approval to utilize \$1,000,000 from the Offshore Wind Sector Initiatives MOU between NJEDA and NJBPU to support the program.

MOTION TO APPROVE: Mr. Dragon **SECOND:** Ms. Marley **AYES: 14**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 3

FINANCE & PROFESSIONAL SERVICES

ITEM: esports Innovation Center Memorandum of Understanding (MOU) —NJEDA and Stockton University

REQUEST: To approve an MOU between NJEDA and Stockton University to provide staff resources and time, marketing support, and \$200,000 in funding to Stockton University's esports initiative; and approval of delegated authority to the CEO to extend the MOU by up to 12 months, to allow the CEO to approve a membership agreement between NJEDA and the Center for a maximum of \$50,000 per year, to allow the CEO to renew membership for up to 3 years, and to allow the CEO of NJEDA to approve additional seed capital of up to \$100,000 per year to support Stockton's initiative for the duration of the MOU.

MOTION TO APPROVE: Mr. Alagia **SECOND:** Mr. Sarlo **AYES: 14**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 4

ITEM: Sports Wagering and Fintech Workforce Development and Innovation Center Memorandum of Understanding (MOU) — NJEDA and New Jersey City University

REQUEST: To approve the MOU between NJEDA and New Jersey City University, to provide staff resources, time, and support, including \$200,000 in funding to NJCU to support the establishment and initial activities of a Sports Wagering and Fintech Innovation Center to strengthen the sports wagering and fintech industries and workforces in New Jersey; as well as approval of delegated authority to the CEO to extend the MOU by up to 12 months, to allow the CEO of NJEDA to approve a membership agreement between NJEDA and the Center for a membership fee is a maximum of \$50,000 per year, to allow the CEO to renew membership for up to 3 years, and to allow the CEO to approve additional seed capital of up to \$100,000 per year to support NJCU's initiative for the duration of the MOU.

MOTION TO APPROVE: Ms. Bauer **SECOND:** Mr. Alagia **AYES: 14**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 5

INCENTIVES

Economic Redevelopment and Growth (ERG) Grant Program

**ITEM: Argus Ellison Associates LLC and Grandparents AE, LLC Mixed-Use Parking
ERG Prod. #00187733**

REQUEST: To approve the application of Argus Ellison Associates LLC and Grandparents AE, LLC for a project located in the City of Paterson, Passaic County. Issuance of the Mixed-use Parking ERG tax credits is contingent upon the Applicant meeting specified conditions within one year. The recommendation is to award 100% of actual eligible parking costs and 40% of the total actual eligible project costs allocable to residential housing uses, not to exceed \$17,000,000.

MOTION TO APPROVE: Ms. Brennan **SECOND:** Commissioner Caride **AYES: 14**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 6

GROW NJ MODIFICATION

**ITEM: GBT US LLC – COVID-Related Termination - Grow New Jersey Assistance
Program (“Grow NJ”) P #41351**

REQUEST: To approve the termination of GBT US LLC’s Grow NJ Incentive Agreement pursuant to the NJ COVID-Related Relief provisions at Section 109(g) of the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156.

MOTION TO APPROVE: Ms. Bauer **SECOND:** Commissioner Caride **AYES: 14**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 7

Ms. Bauer left the meeting at this time

FILM & DIGITAL MEDIA TAX CREDIT

**ITEM: Digital Media Tax Credit Program –Certification of Unused or Unredeemed
Credits in SFY2020 and Increase to SFY2021**

REQUEST: To approve the certification of \$10,000,000 in unused and unredeemed digital media tax credits for SFY2020, which will increase by \$10,000,000 the digital media tax credits available for SFY 2021 to \$20,000,000.

MOTION TO APPROVE: Ms. Brennan **SECOND:** Mr. Alagia **AYES: 12**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 8

Ms. Glover recused because her employer accesses digital media tax credits.

ITEM: Eye on the Ball Enterprises PROD. #00224173

MAX AMOUNT OF TAX CREDITS: \$559,428.00

MOTION TO APPROVE: Commissioner Caride **SECOND:** Mr. Wilton **AYES: 13**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 9

ITEM: Metropark LLC PROD. #00257918
MAX AMOUNT OF TAX CREDITS: \$295,275.80
MOTION TO APPROVE: Commissioner Angelo **SECOND:** Mr. Wilton **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 10

ITEM: Red Hippo Productions PROD. #00228631
MAX AMOUNT OF TAX CREDITS: \$812,419.43
MOTION TO APPROVE: Mr. Wilton **SECOND:** Mr. Alagia **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 11

LOANS, GRANTS, GUARANTEES

Venture - Edison Innovation VC Growth Fund

PROJECT: Forefront Telecare, Inc. PROD. #00258150
LOCATION: Hamilton Township, Mercer County
PROCEEDS FOR: Growth Capital
FINANCING: \$1,000,000.00
MOTION TO APPROVE: Ms. Dragon **SECOND:** Mr. Alagia **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 12

PROJECT: High QA Inc. PROD. #00257900
LOCATION: Hazlet Township, Monmouth County
PROCEEDS FOR: Growth Capital
FINANCING: \$1,000,000.00
MOTION TO APPROVE: Ms. Marley **SECOND:** Ms. Glover **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 13

Micro Business Loan Program

ITEM: Micro Business Loan Program – Changes to Delegated Authority
REQUEST: To approve changes to delegated authority for the Micro Business Loan Program to include delegation to the Managing Director of Community Development and Small Business Services and the Chief Community Development Officer to decline applications for non-discretionary reasons.
MOTION TO APPROVE: Ms. Dragon **SECOND:** Commissioner Caride **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 14

Petroleum Underground Storage Tank (PUST)

ITEM: Summary of NJDEP Petroleum UST Remediation, Upgrade & Closure Fund Program project approved by the Department of Environmental Protection.
MOTION TO APPROVE: Ms. Dragon **SECOND:** Ms. Brennan **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 15

PROJECT: Gordon and Hyacinth Luke
LOCATION: Newark City, Essex County
PROCEEDS FOR: Upgrade, Closure and Remediation
FINANCING: \$103,092.54

PROD. #258036

Hazardous Discharge Site Remediation Fund (HDSRF)

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

MOTION TO APPROVE: Ms. Dragon **SECOND:** Ms. Marley **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 16

PROJECT: Middlesex County (BDA Perth Amboy Waterfront Park) – PROD. #235507
LOCATION: Perth Amboy, Middlesex County
PROCEEDS FOR: Remedial Action
FINANCING: \$2,695,955

PROJECT: Township of West Orange (Biddleman Inc.) – PROD. #258071
LOCATION: West Orange, Essex County
PROCEEDS FOR: Remedial Investigation
FINANCING: \$195,126

REAL ESTATE

ITEM: New Jersey Bioscience Center at North Brunswick - 685 South Route 1, North Brunswick, Middlesex County Lease Agreement with miR Scientific LLC

REQUEST: To approve the execution of a 63-month lease with miR Scientific LLC for approximately 14,662 rentable square feet of laboratory and office space at the New Jersey Bioscience Center and any and all documents required to complete this transaction on final terms acceptable to NJEDA's Chief Executive Officer and the Office of the Attorney General.

MOTION TO APPROVE: Mr. Sarlo **SECOND:** Ms. Dragon **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 17

BOARD MEMORANDA

FYI ONLY: Office of Economic Growth - Q1 2021 Delegated Approvals

FYI ONLY: Credit Underwriting Projects Approved under Delegated Authority, April 2021

FYI ONLY: Post-Closing Bonds Delegated Authority Approvals, 1st Quarter, 2021

FYI ONLY: Post-Closing Credit Delegated Authority Approvals. 1st Quarter, 2021

FYI ONLY: Post-Closing Incentives Delegated Authority Approvals, 1st Quarter, 2021

PUBLIC COMMENT

Ms. Elena Lavarreda, NJ Political Director, 32BJ SEIU addressed the board regarding the EMERGE program.

Mr. Ben Williams addressed the board regarding the EMERGE program.

There being no further business, on a motion by Mr. Quinn, and seconded by Mr. Dumont, the meeting was adjourned at 11:37am.

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: June 9, 2021

Re: June 2021 Board Meeting

Over the past month, New Jersey has taken significant steps toward returning to normal. While this is encouraging news, businesses are still in need of support to help them return to pre-COVID levels of activity and cash flow. The NJEDA is providing this support now to small businesses and nonprofits through Phase 4 of the Small Business Emergency Assistance Grant Program, and we will continue to accept pre-registrations from additional businesses that missed the application window this spring until June 30th. To date, more than 5,000 businesses have been approved for Phase 4 funding totaling more than \$60 million. Since the launch of Phase 1 of the program, we have approved more than 50,000 grants worth a combined total of \$286 million.

In addition to the Emergency Assistance Grant Program, the NJEDA is also providing additional support to restaurants through Sustain and Serve NJ. This innovative program provides grants to community organizations to support bulk purchases of pre-made meals from struggling restaurants for distribution in their communities. So far, restaurants have received more than \$10 million in support and organizations approved for grants have distributed more than one million meals in communities across New Jersey.

While the need for masks is declining, it is no secret that high-quality, affordable personal protective equipment (PPE) was essential for businesses over the past year. The NJEDA's Small and Micro Business PPE Access Program helped businesses identify and purchase the PPE they needed to keep their workers and customers safe. Through collaborations with Staples and Office Depot, the NJEDA provided businesses with 100 or fewer employees access to discounts of nearly 70 percent off the price of PPE purchased through these retailers. Between the program launch last November and the end on May 28th, more than 13,000 businesses were approved for discounts totaling more than \$11.1 million, and businesses can still receive discounts of up to 10 percent through designated vendors Boxed, Office Depot, and Staples.

As we pivot toward recovery and look to the future, programs expanded or created under the Economic Recovery Act (ERA) of 2020 will begin to play an increasingly central role in growing New Jersey's economy. Last month, we opened applications for Emerge, a new job creation tax credit program, and reopened applications for an updated Residential Economic Redevelopment and Growth (ERG) Program, which incorporates improvements from the ERA such as new prevailing wage and minimum wage requirements.

While the challenges of the pandemic linger, there are many reasons to be optimistic. Again and again, New Jerseyans have proven that we are tough and resilient in the face of unprecedented challenges. While we transition from survival to recovery, the NJEDA is committed to ensuring no one is left behind or left out. The COVID-19 pandemic has been a horrible tragedy, but our recovery from it is an opportunity to not just return to our old ways of living and doing business,



but to create a new, better normal that is more equitable and prosperous for everyone. I look forward to working with you all over the coming months to achieve this stronger, fairer recovery.

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

COVID-19 RESPONSE PROGRAM



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: June 9, 2021

RE: Small Business Emergency Assistance Loan Program (Phase 2) – Program Modification

Request

The Members are asked to approve:

1. Delegation to the Chief Executive Officer to execute a modified grant agreement on terms consistent with the application and specific award conditions for the \$11 million USED A Revolving Loan Fund, or as required, should the USED A approve the NJEDA's modification request. The USED A grant modification is required due to proposed program changes outlined herein.
2. Modification to the Small Business Emergency Assistance Loan Program (Phase 2) – a pilot program, funded from the \$11 million USED A award (\$10 million for a revolving loan fund and \$1 million for administrative support), to do the following: focus funding on entities that have started a new business and taken on new space, transitioned from a home-based business or smaller space into a larger space, or acquired an owner-occupied commercial space; use credit check results on owners of for-profit business entities to determine the loan amount; and initiate a streamlined application process that includes mandatory pre-registration.
3. Additional delegation to Authority staff:
 - a. Delegation to Chief Executive Officer, Chief Economic Growth Officer, Chief Legal and Strategic Affairs Officer, Chief Operations and Compliance Officer, or Chief Community Development Officer to impose additional requirements for the Small Business Emergency Assistance Loan Program (Phase 2) as may be required by law as a condition of accepting USED A Revolving Loan Funding, provided that the requirements are consistent with the parameters of the program and the terms and conditions of the USED A award.

- b. Delegation to Managing Director of Underwriting and a Senior Vice President or Executive Vice President, upon recommendation of the underwriter, to approve individual applications for not-for-profits to the Small Business Emergency Assistance Loan Program (Phase 2) in accordance with the terms set forth in the attached program specifications.
- c. Delegation to Director of Business Banking and a Managing Director, Senior Vice President or Executive Vice President, upon recommendation of the Business Development Officer, to approve individual applications for for-profit businesses to the Small Business Emergency Assistance Loan Program (Phase 2) in accordance with the terms set forth in the attached program specifications.
- d. Delegation to the Director of Business Banking, a Managing Director, Managing Director of Underwriting, Senior Vice President or Executive Vice President, upon recommendation of the reviewing officer, authority to decline loan requests based solely on non-discretionary reasons.
- e. For final administrative decisions on appeals based solely on non-discretionary reasons, delegated authority is requested for approval of a hearing officer's decision by an Executive Vice President, Senior Vice President, Managing Director, Director – HUD Programs, or the Director of Legal Affairs.
- f. For matters involving post-closing, specifically: changes to principal amortization, and subordination of collateral liens as requested by the Borrower to obtain additional financing or refinancing of existing debt, all without regard to DSCR or LTV ratios, delegated authority to the department manager responsible for servicing the loans [Program Manager – Loan Servicing or Level 4: Director]. Other existing post-closing credit delegations will apply. Post-closing delegated approvals will be reported to Board quarterly.

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. Subsequent containment measures were implemented, including restrictions on public gatherings and mandated closing for non-essential businesses, which are only recently starting to be relaxed. While these measures were consistent with similar measures being taken nationally to limit the public's exposure to COVID-19, our nation's economy has been adversely impacted. Within New Jersey, small businesses, and residents employed by these businesses, have faced significant economic challenges as businesses have had difficulties meeting payroll obligations and supporting basic operating during this prolonged period of business interruption.

On March 26, 2020, the Board approved the creation of the Small Business Emergency Assistance Loan Program (Phase 1) – an emergency loan program to make low-cost financing available to allow small businesses to cover operating expenses and ensure continuity of operation until the COVID-19 outbreak is controlled to the point where normal operations can resume. This program was funded by \$10 million from the NJEDA general operating budget, and applications for financing were made public beginning April 13, 2020. The response to the program was overwhelming, and by the time the application closed a week later, the Authority received 3,528 applications, representing an estimated \$248 million in total funding requested.

Funding under (Phase 1) of the Small Business Emergency Assistance Loan Program has been completely exhausted. Over the course of 12 months, the Authority approved and funded 145 entities for a total of \$10.2 million.

On July 14, 2020, the Board approved the creation of the Small Business Emergency Assistance Loan Program (Phase 2) – a pilot program, to be funded from the USED A award, to make direct low-cost financing available to help New Jersey small businesses and not-for-profit organizations with recovery and reopening efforts as a result of COVID-19.

As staff prepared to launch Phase 2, staff realized that there was an abundance of funding available at the State and Federal level for businesses that were in existence prior to the declaration of the State of Emergency. Given this market dynamic, staff is requesting to modify the previously approved Phase 2 pilot program to focus on a very targeted segment of businesses and not-for-profits. Phase 2 proposed modifications, if approved, will offer priority funding to those entities that have taken on new space, transitioned from a home-based business or smaller space into a larger space, or acquired an owner-occupied commercial space. Staff is also proposing an improved application process that includes pre-registration, and to evaluate loan amounts to applicants based on credit score results of the guarantor-owners (not applicable to non-profit entities). Details on the proposed modifications are described below.

In response to the economic challenges still being faced by New Jersey small businesses, the Authority is requesting the Board's approval to modify the second phase of the emergency loan program so that the Authority can continue, in the most efficient way possible, to make low-cost financing available to help New Jersey small businesses and not-for-profit organizations with recovery and resiliency efforts as a result of COVID-19.

USED A Revolving Loan Fund

As shared with the Board at the June 9, 2020 meeting, as part of EDA's CARES Act Recovery Assistance, the United States Economic Development Administration (USED A) invited NJEDA to apply for a supplemental Revolving Loan Fund (RLF) award to help respond to the unusual and compelling urgency of the coronavirus pandemic. The award comprises the RLF of up to \$10 million with supporting administration funds of up to \$1 million.

The USED A approved the NJEDA's application for the additional revolving loan fund and the award period started in August 2020. The NJEDA has had a successful experience in managing USED A RLF moneys since 1976. Regarding this award, the key conditions are: expenditure of funds within two years of the date of the award, use of funds to respond to COVID-19, use of best efforts to implement a program expeditiously, advertising and making technical assistance available as widely as reasonably possible, and preventing duplication of federal benefits.

Authority staff has had positive discussions with staff of the USED A regarding the proposed changes. If the Board approves the requested modifications, staff will formally submit to the USED A a request to modify the existing RLF plan.

Program Details

The parameters described below and further highlighted in the attached program specifications detail the Authority's recommended approach to modifying the second phase of the pilot Small Business Emergency Assistance Loan Program.

Under the Small Business Emergency Assistance Loan Program (Phase 2), small businesses and not-for-profit organizations that have leased new or additional business space or acquired new commercial space will become “Stage 1” applicants. To qualify for Stage 1, the applicant must have been in existence prior to the date of application launch and have executed a new lease, leased additional space or acquired an owner-occupied commercial space (office, warehouse, retail, etc.) on or after January 1, 2021. To be eligible, applicants must have \$10 million or less in annual revenue. The leased or acquired space must be a minimum of 500 square feet. If leasing additional space, the increase in additional space must be a minimum of 500 square feet, not the aggregate of the applicant’s total leased space. Applicants may be eligible for a direct loan of up to \$100,000. Home-based businesses are not eligible for financing under Phase 2, as the Board previously approved the creation of the Micro Business Loan Program, which can better serve that market segment.

To improve the process for applicants and allow staff to manage the anticipated heavy volume of applications in a timely manner, we will be implementing some process improvements from lessons learned in Phase 1. Staff will initiate a “Pre-registration” time period prior to application launch. Following the pre-registration time period and on the application launch date, pre-registered entities will be eligible to apply. Staff anticipates that the application period will be open for 1-3 weeks, but Staff will make a final determination on that window after launch and base it on pre-registration application volume and availability of funding.

For the first 10 business days of the application time period only Stage 1 applications will be considered on a first-come, first-served basis. After 10 days, if the NJEDA has not received sufficient applications from Stage 1 applicants to exhaust the available funding, then, the NJEDA may review applications from “Stage 2” applicants that have not signed leases for new or additional space or acquired new space, but meet all other eligibility criteria.

The Authority will also be instituting credit-scoring for for-profit business owners in order to determine loan amounts, recognizing that utilizing an individual’s credit score does not determine a business’s ability to repay debt. However, if the individual owners have been able to successfully maintain their personal credit during the pandemic and the company has supported this level of expense during the pandemic, these are good indicators that the applicant could further support the debt service requirements needed for a loan. Not for profit applicants will be underwritten to a standard of having a minimum debt service coverage ratio of 1.0x.

The Authority will make its best efforts to publicize pre-registration and an application opening date through 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.

Any applicant that does not meet the minimum eligibility requirements outlined in the program specifications and criteria may be declined for these non-discretionary factors (for example, if a business applies with a FICO score less than 600 or is not in good standing with the Department of Labor) by the Director of Business Banking, a Managing Director, Managing Director of Underwriting, Senior Vice President or Executive Vice President based on the recommendation of the reviewing officer. Any declinations based on discretionary factors will be presented to the Board for consideration.

Loans will be serviced according to Standard Operating Procedures to be developed by staff based on NJEDA's existing loan servicing policies and adjusted for the approval criteria and requirements of this program. Consistent with the original approval criteria, modifications may be approved without financial or collateral analysis. There will be no minimum DSCR or maximum LTV ratios or financial reporting requirements for delegated authority approvals.

Loan performance on a portfolio-wide basis will be reported to the Board annually. Approvals or write-off with recourse (which are accounting-only transactions) will be made pursuant to administrative authority and will not be required to be reported to the Board individually. In a write-off with recourse, EDA continues reserving its legal rights to pursue collection and litigation against its obligors.

Businesses whose applications are denied will have the right to appeal. A Hearing Officer will review the application, the appeal, and any other relevant documents or information, and prepare a Final Administrative Decision. For final administrative decisions based solely on non-discretionary reasons, delegated authority is requested for approval of the hearing officer's decision by a Senior Vice President, Vice President, Managing Director, Director – HUD Programs, or the Director Legal Affairs, after which the appeals process will be complete.

Recommendation

Approval is requested for:

- 1- Delegation to the Chief Executive Officer to execute a modified grant agreement on terms consistent with the application and specific award conditions for the \$11 million USED A Revolving Loan Fund, or as required, should the USED A approve the NJEDA's modification request.
- 2- Modification to the Small Business Emergency Assistance Loan Program (Phase 2) as summarized above and outlined in Exhibit A.
- 3- Delegations for approvals, declinations, and appeals to support the efficient processes created for the program, as summarized above and outlined in Exhibit A.



Tim Sullivan, CEO

Attachment:

Exhibit A – Small Business Emergency Assistance Loan Program (Phase 2) Specifications

Small Business Emergency Assistance Loan Program – Phase 2 Program Specifications – Program Modification	
Funding Source	<p>\$10,000,000 – USED A Revolving Loan Fund (contingent upon USED A’s approval of NJEDA’s modified application)</p> <p>\$3.5 million of total funding amount will be reserved for businesses located in an eligible NJ Opportunity Zone census tract.</p>
Program Purpose	To provide low-cost financing to assist small businesses and not-for-profits in New Jersey with recovery and resiliency efforts as a result of COVID-19.
Eligible Applicants	<ul style="list-style-type: none"> • Applicants must be in existence by the date of application launch • Applicants must be registered to do business in the State of New Jersey at time of application • Stage 1 applicants must have executed a new lease, leased additional space or acquired an owner-occupied commercial space on or after January 1, 2021 that is a minimum of 500 square feet. <i>Note: Minimum lease term is 2-years which can be a 1- year lease with a 1-year option to extend; renewing a lease for an existing leased spaced does not qualify as executing a new lease.</i> • Stage 2 applicants that do not meet the new lease, additional leased space or acquired owner-occupied commercial space criteria may still apply, however their applications will not be considered until ten business days after application launch date and will only be considered if program funding remains available. • All applicants must have \$10 million or less in annual revenue as determined by their 2020 tax return or if not yet filed: <ul style="list-style-type: none"> ○ If an applicant’s 2020 tax returns are on extension, their 2019 tax return would be acceptable. ○ For applicants that started operating in 2020 or 2021, management prepared financial statements are acceptable. Financial statements provided may be CPA prepared, management prepared (only in the event of applicants that started operating in 2020 or 2021) or filed copies of business tax returns. The entity must have a physical commercial location in the State of New Jersey (e.g., an office, a physical point of sale, a warehouse, manufacturing facility, etc.). • Eligible applicants must satisfy Taxation’s requirement to ensure that the entity does not have tax debts due to the State. <ul style="list-style-type: none"> ○ This could be accomplished, as determined by Taxation, through a certification from the applicant that it doesn't owe any taxes and will be subject to immediate repayment if the certification is not correct. NJEDA will also verify with Taxation that the applicant has no outstanding tax obligations to the State. • Entity 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.

Small Business Emergency Assistance Loan Program – Phase 2 Program Specifications – Program Modification	
	<ul style="list-style-type: none"> • If the entity has any NJEDA obligations, they must be in good standing. • No Duplication of Benefits: 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 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. <p>Other Considerations:</p> <p>All not-for-profits organized under 501(c) of the Internal Revenue Code are also eligible for the program.</p> <p>Applications are limited to one application per employer identification number (EIN). Entities with different EINs will be permitted to submit one application per EIN even if there is common ownership. Businesses with multiple locations, but only one EIN, will be limited to one application (under the sole EIN).</p> <p>The following entities are not eligible for financing under the program even if otherwise eligible:</p> <ul style="list-style-type: none"> • Home-based businesses • Real Estate Holding Companies • Prohibited businesses as defined below <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 sale; sales by transient merchants, Christmas tree sales or other outdoor storage; any activity constituting a nuisance; or any illegal purposes.</p>
Eligible Uses	<p>The following are eligible expenses:</p> <ul style="list-style-type: none"> • Inventory* • Rent/Mortgage • Payroll* • Utilities* • Personal protective equipment*

Small Business Emergency Assistance Loan Program – Phase 2 Program Specifications – Program Modification	
	<ul style="list-style-type: none"> Furniture, fixtures or equipment, provided it does not require professional installation costs in excess of \$1,999 (invoices will be required to support request) <p>* most recent 3-month average will be used to calculate variable expenses</p> <p>The following uses are not eligible uses of the Small Business Emergency Assistance Loan Program (Phase 2):</p> <ul style="list-style-type: none"> Refinancing of existing debt Personal, non-business, obligations or costs incurred by related entities Construction-related expenses or contracts Furniture, fixtures or equipment requiring professional installation costs in excess of \$1,999
Application Process and Board Approval/ Delegated Authority	<p>Staff anticipates that the application will be open for 1-3 weeks, but will make a final determination after launch based on application volume and availability of funding. For the first 10 days of the application time period Stage 1 applications will be considered on a first-come, first-served basis.</p> <p>If after 10 days, the NJEDA does not receive sufficient applications from applicants to exhaust the available funding, the NJEDA will accept applications from Stage 2 applicants that do not meet the Stage 1 criteria, but meet the other eligibility criteria.</p> <ul style="list-style-type: none"> The \$3.5 million of total funding reserved for applicants located in an eligible NJ Opportunity Zone census tract will be allocated back into the general pool, if the set-aside is not fully utilized following the review and approval of all eligible Stage 1 and Stage 2 applications. Stage 1 applications will be reviewed on a first-come, first-served basis, based on the date/time in which NJEDA received the completed application and approved based on completeness. Stage 2 applications will be reviewed on a first-come, first-served basis, based on the date/time in which NJEDA received the completed application and approved based on completeness and availability of funding. In the event that a Stage 2 applicant applies during the Stage 1 time period, the application will be declined, as it applied during an ineligible time period. Upon recommendation of the Business Development Officer and the Director of Business Banking, a Managing Director, Senior Vice President or Executive Vice President will approve for-profit projects for assistance under Delegated Authority. Activity will be reported monthly to the NJEDA Board Upon recommendation of the underwriter, the Managing Director of Underwriting and a Senior Vice President or Executive Vice President will approve not-for-profit projects for assistance under

Small Business Emergency Assistance Loan Program – Phase 2 Program Specifications – Program Modification	
	<p>Delegated Authority. Activity will be reported monthly to the NJEDA Board.</p> <ul style="list-style-type: none"> • Upon recommendation of the reviewing officer, the Director of Business Banking, a Managing Director, Senior Vice President, or Executive Vice President will decline projects solely based on non-discretionary reasons. • Businesses whose applications are declined will have the right to appeal. A Hearing Officer will review the application, the appeal, and any other relevant documents or information, and prepare a Final Administrative Decision. For final administrative decisions based solely on non-discretionary reasons, delegated authority is requested for approval of the hearing officer's decision by a Senior Vice President, Managing Director, Director – HUD Programs, or the Director Legal Affairs, after which the appeals process will be complete. <p>Entities applying for a Small Business Emergency Assistance Loan – Phase 2 will complete a simplified debarment legal questionnaire, and debarment issues will be reviewed under existing delegated authority, including the delegated authority approved at the time of the Superstorm Sandy programs.</p> <ul style="list-style-type: none"> • Approvals for post-closing matters are delegated to the department manager responsible for servicing the loans (i.e. Program Manager – Loan Servicing) or Level 4: Director: specifically, approval of subsequent six-month payment moratoria when needed, changes to principal amortization, and subordination of collateral liens as requested by the Borrower to obtain additional financing or refinancing of existing debt, all without regard to DSCR or LTV ratios. Other existing post-closing credit delegations will apply. Post-closing delegated approvals will be reported to Board quarterly.
Loan Amounts	<p><u>For for-profit entities, there will be a two-step process in assessing an applicant's loan amount. Loan amounts to non-profit entities will be based only on Step 2, but they must also meet underwriting criteria as described below.</u></p> <p><u>Step 1 in Loan Amount Determination</u></p> <ul style="list-style-type: none"> • Up to \$50,000 direct loan – average credit score 600 to 700 • Up to \$75,000 direct loan – average credit score 701 to 749 • Up to \$100,000 direct loan – average credit score 750 to 850 <p>* Average is based upon reporting from all three credit reporting companies</p> <p><u>Step 2 in Loan Amount Determination</u></p> <ul style="list-style-type: none"> • The loan amounts will be sized based on validation of support

Small Business Emergency Assistance Loan Program – Phase 2 Program Specifications – Program Modification	
	<p>provided for the uses requested (i.e. if a business applies for and is eligible for \$100,000 based on credit score, but the documentation provided only supports \$85,000 – the request will be reduced to \$85,000).</p> <ul style="list-style-type: none"> ○ The historical 3-month average monthly expenses will be multiplied by 18 forward looking eligible months. If an applicant has not been in operation for a time period greater than 3 months, we will use the average of the time period they have been in operation to determine the eligible average monthly expenses. In addition to the calculation for variable expenses, invoices will be required to calculate the cost of FF&E to determine eligible amount not to exceed Step 1 loan amount.
Rates & Terms	<ul style="list-style-type: none"> • Term/Amortization: 10 years • Interest Rate: 0% • Deferred principal payments for 24 months
Underwriting/Approval Criteria	<ul style="list-style-type: none"> • The majority business owner will be required to have an average minimum credit score (FICO) of 600 to be eligible for funding. NJEDA will review the average credit score of all owners to determine the amount of funding available. • When there are multiple owners with equal ownership, NJEDA will review the lowest average credit score of all owners and will use the lowest average credit score to determine the amount of funding available. In cases where the lowest average score is below 600, applicant would be eligible for up to \$50,000, provided at least one other majority owner has an average credit score above 600. • The financial information that is provided will only be utilized to verify annual revenue and ownership of the applicants – it will not be used to determine the applicant's ability to repay this loan • Not-for-profits will be required to meet a minimum Debt Service Coverage Ratio (DSCR) of 1.00x based on most recent tax return or financial statement. • Initial Risk Rating will be “substandard”
Lien/Collateral/Security	<ul style="list-style-type: none"> • A blanket lien will be filed on business assets only. The lien will subordinate in position to all existing and future senior lenders. • Guarantors: Unlimited personal guarantees for all adult individuals or entities with ownership in for-profit applicants and related entities, regardless of ownership percentage, will be required. This requirement does not apply for not-for-profit organizations
Fees	<p>Due to the financial hardship experienced by the entities that are eligible for this program, there will be no fees associated with the Small</p>

Small Business Emergency Assistance Loan Program – Phase 2 Program Specifications – Program Modification	
	Business Emergency Loan Program for the first five years of a loan, including application fees, and then standard modification fees will be charged consistent with the Small Business Fund fee structure in place at the time of board approval for this program.
Post-Closing Monitoring	<ul style="list-style-type: none"> • Risk Rating will be adjusted incrementally based on payment history

AUTHORITY MATTERS



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan,
Chief Executive Officer

DATE: June 9, 2021

SUBJECT: Request for Release of USEDPA Federal Interest in Revolving Loan Funds

SUMMARY

The Members are asked to approve the submission of a written request for the release of United States Department of Commerce, Economic Development Administration's ("USEDPA") federal interest in existing Revolving Loan Funds (RLFs) that are currently operated by the New Jersey Economic Development Authority ("Authority") and delegation to the Authority's Chief Executive Officer to execute an agreement with the USEDPA for the release.

BACKGROUND

Over its history, the Authority has received several RLF awards, with the first award dating back to 1976. NJEDA currently operates five RLFs (Exhibit 1), initially capitalized with \$21,374,606. These funds have revolved and were used successfully to provide nearly 850 loans exceeding \$200MM.

In March 2021, the Authority received an invitation from USEDPA to request the release of its federal interest in the Authority's revolving loan fund awards. The USEDPA, through the Reinvigorating Lending for the Future Act, is authorized to release its federal interest in certain Revolving Loan Fund awards that have operated satisfactorily for seven years beyond disbursement of grant funds.

The Authority intends to submit a request to USEDPA to release its federal interest in the five active RLFs, as they each satisfy the requirement of operating for seven years beyond disbursement of the grant. If the request is approved by USEDPA, it will reduce the Authority's administrative burden as well as allow the RLF awards to be used for broader economic development purposes.

It should be noted that Award #01-19-63008 was initially awarded in 1995 to New Jersey Department of Commerce and Economic Development as the recipient with New Jersey Economic Development identified as the subgrantee. Since that time, the NJEDA has administered the funds directly. The Department of Commerce and Economic Development was abolished pursuant to N.J.S.A. 52:27C-64, and all its powers, functions, and duties were continued in the New Jersey Commerce Commission. The Commerce Commission itself was abolished by N.J.S.A. 34:1B-212, and all its powers, functions, and duties were transferred to EDA, unless otherwise specified in the act that abolished the Commerce, under a newly created Division, the Division of Business Assistance, Marketing, and International Trade "Division." Furthermore, the Division was subsequently transferred to the Department of State in 2011 by Executive Order. As a result of the sequence of entities being abolished and transferred, the award originally given to Department of Commerce and Economic Development would now be held by the Department of State. NJEDA will work with Department of State to facilitate the defederalization of this specific grant. EDA will continue to administer the funds.

If the requests are approved, the Authority would be obligated to continue to carry out the original economic development purposes of the RLFs. Currently, the RLF funds are used to provide financing assistance primarily to small and mid-sized businesses. The RLF funds will continue to be used for economic development lending and other programs that foster economic development activities.

Upon USEDAs approval of the request, the Authority will be required to execute an agreement to release USEDAs federal interest in the RLF awards. This agreement includes a requirement that the Authority provide ongoing timely and accurate responses to USEDAs inquiries regarding the use of the award funds. For reference, a sample agreement, provided by USEDAs, is attached in Exhibit 2. The final agreement may vary based on the circumstances of the Authority's awards and will be reviewed by the OAG prior to execution.

RECOMMENDATION

The Members are asked to approve:

- 1) the Authority's submission of a written request and required documentation to USEDAs to release its federal interest in the five Revolving Loan Funds
- 2) delegation to the CEO of the Authority to execute an agreement with the USEDAs and any required documentation.



Tim Sullivan
Chief Executive Officer

Prepared by: Lori Matheus

EXHIBIT 1**NJEDA Consolidated Title IX Fund - Individual Programs**

Award Number:	Name of Revolving Loan Program:	Award Date:
01-19-01468	Economic Development Administration Public Works and Economic Development Act of 1965, Title IX (OKONITE RLP)	5/26/76
01-19-01825	Economic Development Administration Public Works and Economic Development Act of 1965, Title IX (TITLE IX RLP)	9/29/78
01-19-01825-01	Economic Development Administration Public Works and Economic Development Act of 1965, Title IX (NYSR&WRXR RLP) "Susquehanna & Western Railroad"	9/29/81
01-19-02464-01	Economic Development Administration Public Works and Economic Development Act of 1965, Title IX (HYCL RLP) "Hyatt Clark"	11/30/83
01-19-63008	Economic Development Administration Public Works and Economic Development Act of 1965, Title IX Economic Adjustment Sudden and Severe Economic Dislocation Implementation (FSH RLP) "Fisheries"	2/3/95

EXHIBIT 2

**AGREEMENT TO RELEASE THE EDA FEDERAL INTEREST IN A
REVOLVING LOAN FUND AWARD**

THIS AGREEMENT is between the United States Department of Commerce, Economic Development Administration (EDA) and [Recipient Name] (Recipient).

WHEREAS, EDA, pursuant to its authority under the Public Works and Economic Development Act of 1965 (PWEDA) (42 U.S.C. § 3121 *et seq.*), awarded to Recipient one or more grants to capitalize a Revolving Loan Fund (RLF) bearing EDA award number(s) [NUMBER(S)] (the Award).

WHEREAS, EDA retains a federal interest in the Award and Recipient has submitted a written request that EDA release its federal interest in the Award consistent with the requirements of the Reinvigorating Lending for the Future Act (Pub. L. 116-192), attached hereto as Appendix A (the Request).

WHEREAS, EDA and Recipient agree that the current value of the RLF capital base is \$[AMOUNT], the federal investment rate is [PERCENT]%, and the federal share of the RLF capital base is \$[AMOUNT] (the Award Funds).

WHEREAS, EDA has determined that 1) more than seven years have passed since the final EDA disbursement to Recipient of funds under the Award, 2) Recipient has complied with the terms and conditions of the Award, and 3) Recipient proposes to use the Award Funds for one or more activities that continue to carry out the economic development purposes of PWEDA.

WHEREAS, EDA agrees herein to release its federal interest in the Award and Recipient agrees herein to use Award Funds for one or more activities that continue to carry out the economic development purposes of PWEDA.

NOW THEREFORE, EDA and Recipient agree as follows:

1. EDA's Release. EDA agrees to release its federal interest in the Award. EDA's reversionary interest in the Award will cease to exist as of the effective date of this agreement.
 - a. Recipient's use of Award Funds no longer needs to comply with, among other things, the following authorities:
 - i. OMB regulations at 2 CFR part 200, including the Compliance Supplement at Appendix XI.
 - ii. EDA regulations at 13 CFR chapter III, including the RLF-specific regulations at part 307, subpart B (including the requirement at 13 CFR § 307.14 to submit Form ED-209 RLF Financial Report to EDA).

- iii. The terms and conditions attached to the Award, including the Department of Commerce's Standard Terms & Conditions, the EDA RLF Standard Terms & Conditions, and any Special or Specific Award Conditions.
 - iv. The EDA-approved RLF plan or any related document governing administration of the Award.
 - b. This release of the EDA federal interest in the Award does not extend to or include a release of any other entity's interest in the RLF capital base, including another federal agency's interest in the RLF capital base. More specifically, if Community Development Block Grant funds from the U.S. Department of Housing and Urban Development (HUD) or funds from the U.S. Department of Agriculture (USDA) were used as local share under the Award, this release of the EDA federal interest does not extend to or include a release of any HUD or USDA federal interest in the RLF capital base. If Recipient seeks a release of another entity's interest in the RLF capital base, including another federal agency's interest in the RLF capital base, Recipient must negotiate such a release with the other entity and EDA will not participate in that negotiation.
2. Recipient's Use of Award Funds. Recipient agrees to use Award Funds for one or more activities that continue to carry out the economic development purposes of PWEDA.
- a. Recipient shall not use Award Funds to construct schools, community centers, municipal buildings, or otherwise use Award Funds to carry out activities outside of the economic development purposes of PWEDA, nor shall Recipient use Award Funds to pay general costs of government.
 - b. Recipient shall not transfer Award Funds to a natural person, for-profit entity, or other entity ineligible for award under sections 3(4) and 209 of PWEDA (42 U.S.C. § 3122(4) and § 3149). For the sake of clarity, Award Funds may be used to contract with for-profit entities for goods and services for one or more activities that continue to carry out the economic development purposes of PWEDA and to operate an RLF that makes loans to for-profit organizations.
 - c. Award Funds must be used in a manner consistent with EDA's non-relocation policy. Specifically, Recipient shall not use Award Funds to induce the relocation of existing jobs within the U.S. that are located outside of a jurisdiction to within that jurisdiction in competition with other U.S. jurisdictions for those same jobs.
 - d. Award Funds must be used in accordance with section 602 of PWEDA (42 U.S.C. § 3212). Specifically, Recipient shall ensure that all laborers and mechanics employed by contractors or subcontractors on projects assisted by Award Funds shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor as provided by section 602 of PWEDA or as it may be amended in the future.
 - e. Recipient shall use Award Funds in accordance with applicable federal, state, and local law, including applicable non-discrimination law. Recipient may not use Award Funds for any purpose that would be prohibited by the Establishment

Clause of the U.S. Constitution if the Award Funds were expended directly by the Federal Government.

- f. Recipient is not required by the terms of this Agreement to seek EDA approval or permission to use Award Funds for one or more activities that continue to carry out the economic development purposes of PWEDA but that differ from the activities described in the Request, attached hereto as Appendix A.
 - g. Recipient shall provide timely and accurate responses to EDA inquiries regarding Recipient's use of the Award Funds. Following the release of EDA's federal interest, EDA remains interested in working with Recipient to promote Recipient's RLF or other activities that continue to carry out the economic development purposes of PWEDA.
- 3. Enforcement. In the event that EDA determines that Award Funds have been used in a manner inconsistent with this agreement, EDA may require Recipient to return the misspent portion of the Award Funds to the Federal Government, which may include the establishment of a debt with the U.S. Department of the Treasury.
 - 4. Indemnification. To the extent permitted by law, Recipient agrees to indemnify and hold the Federal Government harmless from and against all liabilities that the Federal Government may incur as a result of releasing EDA's federal interest in the Award.
 - 5. Governing Law; Severability. This Agreement is governed by applicable federal law, if any, and if there is no applicable federal law by state law. The terms of this Agreement do not limit the rights EDA, its designees, successors, or assigns are entitled to under applicable federal or state law. In the event that any provision or clause of this Agreement conflicts with applicable law, such conflict shall not affect other provisions of this Agreement that can be given effect without the conflicting provision, and to this end the provisions of this Agreement are declared to be severable.
 - 6. Entire Agreement. This Agreement contains the entire understanding of EDA and Recipient with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral or written, with respect to such matters.
 - 7. Authority. Recipient represents that (a) it has the power and authority to execute and perform this Agreement, (b) the execution and performance of this Agreement by Recipient have been duly authorized by all necessary corporate or other actions, (c) Recipient has duly and validly executed this Agreement, and (d) this Agreement is a legal, valid and binding obligation, enforceable against Recipient.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, EDA and Recipient have caused this Agreement to be duly executed by their respective officers as of the date indicated.

**DEPARTMENT OF COMMERCE,
ECONOMIC DEVELOPMENT
ADMINISTRATION**

[RECIPIENT NAME]

By: _____
[NAME]
Regional Director
[CITY] Regional Office

By: _____
[Authorized Signatory Name]
[Authorized Signatory Title]

Date

Date

Appendix A

[Attach Recipient's written request that EDA release its federal interest in the Award.]



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: June 9, 2021

RE: Use of Economic Relief Act of 2020 appropriation and Creation of Government Restricted Municipality Planning Grants

Summary

The Members are asked to approve:

1. The creation of the Government Restricted Municipality Planning Grants Program to make grant funding available that will maximize New Jersey municipalities' growth potentials by providing custom blueprints for a long-term strategic action plan.
2. Authorize \$750,000 in funding from the allocation as listed in the Economic Recovery Act of 2020

This funding opportunity is issued by the New Jersey Economic Development Authority ("Authority", "EDA") as the part of Governor Murphy's campaign to build a stronger and fairer New Jersey and to facilitate recovery from the COVID-19 pandemic with substantive investments in New Jersey's people, communities, Main Streets, and businesses.

This funding will enhance community knowledge, skills, and abilities related to economic planning by providing actionable plans for government-restricted municipalities and technical analysis of the methods, research, and deployment actions used in the plan's design and authorship with the end goal of attracting new investments to participating municipalities.

Background on Government Restricted Municipality Planning Grants

Using funding from the New Jersey Economic Recovery Act of 2020 (“Economic Recovery Act”), the Government Restricted Municipality Planning Grants Program will provide grants to qualified applicants to create long-term strategic action plans to assist New Jersey’s Government Restricted Municipalities (GRM) maximize their growth potentials and implement new or stalled community-focused economic growth projects

During the application process, applicants will identify key opportunities to provide significant, sustainable, and resilient benefits for community members and business stakeholders. The strategic action plans developed by the grant recipients will provide for projects that are most actionable and have the greatest potential for broad community benefit. Through this process, applicants will develop clear action plans based on the library of research and planning completed by the GRM’s governing body and executive departments, major civic organizations, business stakeholders and strategic anchors such as higher education institutions, transportation partners, arts organizations and health care organizations. . This planning funding will have great potential to focus the flow of private capital and economic investment into communities that have historically faced economic challenges and build the local capacity needed to successfully execute additional projects in the future.

Government Restricted Municipality Planning Grants

In line with Governor Phil Murphy’s commitments to investing in communities and investing in people, the Government Restricted Municipality Planning Grants Program seeks to assist communities in leveraging planning capacity to meet the community’s goals.

The focus of the grant’s work product must be a government restricted municipality defined in Sections 55 and 69 of the Economic Recovery Act as *a municipality in this State with a municipal revitalization index distress score of at least 75, that met the criteria for designation as an urban aid municipality in the 2019 State fiscal year, and that, on the effective date of P.L. 2020, c. 156 subject to financial restrictions imposed pursuant to the Municipal Stabilization and Recovery Act P.L.2016, c.4 (N.J.S.A. 52:27BBBB-1 et seq.), or is restricted in its ability to levy property taxes on property in that municipality as a result of the State of New Jersey owning or controlling property representing at least 25 percent of the total land area of the municipality or as a result of the federal government of the United States owning or controlling at least 50 acres of the total land area of the municipality, which is dedicated as a national natural landmark.*

Applicants must apply to work with one of the designated government restricted municipalities.

Recipients will be tasked with the design and submission of a detailed, long-term, and action-oriented strategic plan that incorporates existing plans of the GRM and identifies technical capacity needs that have held these projects back from completion. The strategic action plans developed through this grant program will better position GRMs to implement and execute on these stalled projects.

The funding opportunity is open to all qualified applicants and for the express benefit of government supported municipalities which are defined as the cities of Atlantic City, Paterson and Trenton. Qualified applicants are defined as New Jersey municipalities, New Jersey counties, New Jersey authorities, faculty and staff of accredited higher education institutions, public interest research groups and/or professional services providers who have completed at least one municipal, county or New Jersey state government plan focused on economic revitalization. Vested interest in close co-operation must be shown by a letter of support from the chief executive of the eligible government restricted municipality. The strategic plan and subsequent supporting documentation will then be disseminated to the public for use in community focused economic planning opportunities in government restricted municipalities.

EDA intends to award up to \$750,000, structured as three individual grants of up to \$250,000 to applicants selected by the Board by demonstrating how their programs as detailed in the submitted strategic plan will help GRMs catalyze dormant or planned projects. These grants will help to position municipalities, counties, and regional partnerships to augment their investment capacity and attract project investment. Applicants may apply to work with more than one GRM. Each GRM will be the focus of at least one grant.

Applications will be accepted up and until sixty days after the opening of applications. Applications will then be reviewed for completeness and scored by an evaluation committee based on the criteria set forth in below. Proposals with scores equal to or greater than 50 will be presented to the Board for review and award. The Committee will make award recommendations to the Board of the highest ranked application for each GRM

The expected date of the grant award will be fourth quarter 2021. The term of the grant shall be for a period of six (6) months. The six-month term will begin on the date of the execution of the grant agreement by the Authority. One extension of one month may be authorized at the discretion of the Authority.

I. Scope of Work

The Authority is seeking applications from New Jersey municipalities, New Jersey counties, Independent authorities of New Jersey municipalities, New Jersey counties, New Jersey regions or State of New Jersey, accredited higher education institutions, public interest research groups and/or professional services providers who have completed at least one municipal, county or New Jersey state government plan focused on economic revitalization to develop long-term strategic action plans comprising an in-depth analysis of community planning activities that will lead to actionable project plans focused on community goals, attracting socially responsible investment, and building localized investment planning capacities. The use of grant funds must be focused on planning and long-term economic development planning efforts in the government restricted municipalities identified in the Economic Recovery Act with the ultimate goal of actualizing community-focused economic growth projects.

Applicants are encouraged to leverage any pre-existing or uniquely relevant community plans from a wide variety of stakeholders as well as the knowledge, skills, and abilities of community stakeholders; anchor partners in medicine, higher education, and the beaux arts; and local business stakeholders and unions. Applicants may propose to hire or subcontract with outside experts and may consider any approach or combination of approaches to achieve the program goals of strategic economic planning with an action focus.

II. Eligible Respondents

Qualified applicants are defined as New Jersey municipalities, New Jersey counties, New Jersey authorities, accredited higher education institutions, public interest research groups, and/or professional services providers who have completed at least one municipal, county, or New Jersey state government long-term strategic action plan focused economic revitalization.

Applicants must clearly articulate how their respective plans will position the GRM to activate projects as part of an overall economic development strategy. Applicants should also articulate how the plans will enhance local civic capacity to attract socially responsible investment. Proposals must clearly demonstrate a viable path to implementation and show a collaborative stakeholder engagement process.

Applicants should identify any specific difficulties, challenges, or issues that have the potential to impede project investment in their GRM and should explain how the proposed strategic plan would be used to identify or work toward a solution in that gap.

All applicant proposals must be focused on long term action oriented strategic economic planning. Applicants may submit multiple individual applications where each individual application is focused on one GRM. Each applicant must provide a letter of support from the Chief Executive of the GRM which will be the subject of the applicant's proposed plan. A GRM municipality may propose to author a plan. This will not preclude the Chief Executive of the GRM from issuing additional letters of support to other applicants.

III. Application Requirements

The Applicant shall describe its approach to undertaking a strategic planning project as outlined in **Section I– Scope of Work** by clearly explaining how the planning project will work to accomplish the goals of the Government Restricted Municipality Planning Grants program.

In line with these goals, the application must contain, at a minimum, the required information identified below (as applicable):

- Completed Application Information Form (Attachment A), and any additional information related to the Scope of Work that the applicant feels is relevant but not specifically requested on Attachment A.

- Completed Budget Form (Attachment B) that demonstrates how the full project budget is being utilized. The budget must detail hard and soft costs, which include, but are not limited to, labor costs, contract/technical services and support costs, and material costs. The budget must project out that the final deliverable will be met within six (6) months of grant agreement execution. The budget will be outlined in a fee schedule.
- Demonstration of the plan's ability to achieve the substantive planning goals of the Government Restricted Municipality Planning Grants Program as outlined in Scope of Work.
- Demonstration of the project effort's ability to achieve the goal of a long term strategic action plan.
- Demonstration of the ability to analyze multiple plans in order to find actionable items that will catalyze projects of merit.
- Demonstration of an investment strategy.
- Demonstration of a defined collaborative stakeholder engagement process and strategy.
- Signed letter of support from the chief executive of the government restricted municipality expressing support for the application. A government restricted municipality may only submit one application but may issue letters of support for other applicants.
- Outline of roles, responsibilities and resources which the applicant and its partners (as applicable) will contribute to the project effort.
- Examples or information reflecting prior experience of applicant in executing planning projects of a similar size and scope.
- Information relating to organization and/or personnel that will work on the proposed planning, as well as any partners or subcontracted organizations or individual(s) that will conduct the proposed planning, including contact names and telephone numbers, evidence of the applicant's qualifications, and capabilities to perform the services required by this application, as well as resumes or bios for all key personnel who will or who are expected to perform the work outlined in the application. Any information specific to personnel should emphasize relevant qualifications and experience of these individuals in successfully completing contracts of a similar size and scope, relative to the Scope of Work in this application.

IV. Disbursement

Grant disbursements by the Authority will *only* be made to the grantee(s) who shall be responsible for assuring the compliance of any sub-contractors with all terms and conditions of the program and who assumes the sole and absolute responsibility for any payments due to any sub-contractors pursuant to applicable laws.

Disbursements to Grantees will be made pursuant to the following disbursement schedule: 50 percent of the grant amount upon execution of the grant agreement; 25 percent of the grant amount on or around the halfway point of the grant term (3 months), upon EDA's receipt and approval of a progress report; and 25 percent upon completion and submission of the final plan.

At a minimum, the progress report referenced above must include:

- Summary of funds expended to date and
- Narrative detailing milestones achieved and overall progress toward completion of final plan.

A call with the Designated Authority Project Manager and the Grantee's assigned Account Manager or Back-Up Account Manager will be held monthly for the first three months of the grant term, up until the halfway point of the grant term where the 25 percent disbursement is made. During and following that time, additional calls may be held on an as needed basis until the grant term has ended.

V. Evaluation/Scoring Criteria

Applications will be evaluated by a cross-organizational Evaluation Committee composed of the Authority's staff and management, with the advice of state Agencies/Department Subject Matter Experts (SME's) to evaluate, score, and rank applications.

Proposals will be evaluated and scored on each of the criteria below according to a scale of one to twenty (1 – 20) based on the information submitted in applications as set forth in Section III-Technical Proposal.

It is the policy of the EDA that to be considered for award, a Proposer must achieve or exceed an overall score of fifty with one hundred being the highest rating. The Authority will make no awards to proposals that score below a 50.

Evaluation Criteria -

The point scale is as follows for:

- 0 points - Absence of ability to meet the criteria.
- 1 – 7 points – Minimal ability to meet the criteria.
- 8 – 11 points – Satisfactory ability to meet the criteria.
- 12 – 17 points – Exceptional ability to meet the criteria.
- 18 – 20 points - Unique ability to meet the criteria.

- 1) Demonstration of the plan's ability to achieve the substantive planning goals as outlined in Scope of Work.

- 2) Demonstration of the ability to achieve the goal of a long term strategic action plan.
- 3) Demonstration of the ability to analyze multiple plans in order to find actionable items that will catalyze projects of merit.
- 4) Demonstration of an investment strategy within the strategic plan proposal.
- 5) Demonstration of a defined collaborative stakeholder engagement process and strategy.

In the case of a tie score, the score on question 3 will be used to determine ranking criteria and award recommendation as necessary.

Recommendations

The Members are asked to approve:

1. The creation of the Government Restricted Municipality Planning Grants Program to make grant funding available that will maximize New Jersey municipalities' growth potentials by providing custom blueprints for a long-term strategic action plan.
2. Authorize \$750,000 in funding from the allocation as listed in the Economic Recovery Act of 2020



Tim Sullivan
Chief Executive Officer

Attachment A- Information Form

Attachment B-Budget Form

Application Information Form-Attachment A Government Restricted Municipality Planning Grants-Phase I

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

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

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

SECTION I: GENERAL INFORMATION

APPLICANT NAME

PROJECT FOCUS-GRM MUNICIPALITY

APPLICANT ADDRESS:

APPLICANT CONTACT:

APPLICANT E-MAIL ADDRESS:

APPLICANT CONTACT PHONE NUMBER:

If applicable, please list any other partners participating on this proposal.

SECTION II: PROJECT DETAILS

1. Project Title (10 Word Maximum):

2. Project Details:

Please attach a narrative that describes the existing conditions of the focus GRM, specifically:

- A. Municipal Focus
- B. Existing Body of Planning Work
- C. Recently completed major projects in GRM
- D. Planning work in progress
- E. Major pipeline projects
- F. Major municipal stakeholders

3. Project/Plan Details:

Please submit, as an attachment to your application, a narrative that describes the planning project to be undertaken, specifically:

- A. Project/Plan Description, including specifically how the grant funding will be used to help the Government Restricted Municipality plan solutions will position the GRM to activate projects as part of an overall economic development strategy:
 - a. Narrative detailing how respective plan will position the GRM to activate projects as part of an overall economic development strategy.
 - b. Narrative detailing how plan will enhance local civic capacity to attract socially responsible investment.
 - c. Narrative demonstrating a viable path to implementation and show a collaborative stakeholder engagement process.
 - d. Detailed narrative identifying any specific difficulties, challenges, or issues that have the potential to impede project investment in their GRM and how the proposed strategic plan would be used to identify or work toward a solution in that gap.
- B. Identification of Project Purpose and Merits, which may include:
 - a. Project effort's ability to achieve the goal of a long term strategic action plan.
 - b. GRM-specific needs and challenges.
 - c. GRM anchor institution and local stakeholder needs and challenges.
 - d. Long term viability of strategic action plan
 - e. Ability to consider and mitigate any past difficulties in technical planning that created challenges for GRM
 - f. Ability to research and analyze multiple plans across multiple disciplines and sectors to identify stalled catalytic projects
 - g. Ability to identify technical planning gaps in catalytic project
- C. Narrative detailing plans to engage local residents and businesses in planning efforts

- D. Explain the degree to which the plan will advance the ability of the host GRM municipality to attract private market or other government investment to stalled projects identified in the strategic action plan.

4. Applicant Background & Viability:

Please submit, as an attachment to your application, a narrative that describes the following information about the applicant and any associated partners:

- A. Explanation of any inherent structural challenges the municipality
- B. If the applicant has entered into a partnership for the purposes of this application, please describe the nature of this partnership including the roles that the partners will serve in the proposed project. If there are multiple partners, please be specific about the role of each individual partner.
- C. Please provide information demonstrating the ability of the applicant to execute the planning project. This may include, but is not limited to:
- a. Description of the project's milestones and how they will be measurable and achievable.
 - b. Experience in successful completion of planning and or economic development projects similar in size and scope to the proposed project
 - c. Description of experience, capacity, and skills of planning team and/or consultant
 - d. Information relating to organization and/or personnel that will work on the proposed planning, as well as any partners or subcontracted organizations or individual(s) that will conduct the proposed planning, including contact names and telephone numbers, evidence of the applicant's qualifications, and capabilities to perform the services required by this application, as well as resumes or bios for all key personnel who will or who are expected to perform the work outlined in the application.
 - Any information specific to personnel should emphasize relevant qualifications and experience of these individuals in successfully completing contracts of a similar size and scope, relative to the Scope of Work in this application.

SECTION III: CHIEF EXECUTIVE LETTER OF SUPPORT

To be considered eligible for a grant award, proposals must have a letter of support from the Chief Executive of the GRM which will be the subject of the applicant's proposed plan. Please provide a letter of support and attach to this proposal

IRM Planning Grant-Phase I - Plan Budget/Disbursement Schedule

Applicant/Focus GRM	
Total Plan Budget *	\$ -
Grant Amount	\$ 250,000.00

Plan Stage	Initial		Midpoint		Final	
Grant Disbursement Amount	\$	125,000.00	\$	62,500.00	\$	62,500.00
% of Total **	50.00%		25.00%		25.00%	
Budget (Detail, on a line item basis, the tasks or items that will be supported by the grant disbursement. Total should equal amount requested in "Amount" column)	Stage 1 Budget		Stage 2 Budget		Stage 3 Budget	
	Item Description	\$ -	Item Description	\$ -	Item Description	\$ -
	Item Description	\$ -	Item Description	\$ -	Item Description	\$ -
	Item Description	\$ -	Item Description	\$ -	Item Description	\$ -
	Item Description	\$ -	Item Description	\$ -	Item Description	\$ -
	Item Description	\$ -	Item Description	\$ -	Item Description	\$ -
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	Item Description	\$ -	Item Description	\$ -	Item Description	\$ -
	Item Description	\$ -	Item Description	\$ -	Item Description	\$ -
	Item Description	\$ -	Item Description	\$ -	Item Description	\$ -
	Stage Total	\$ -	Stage Total	\$ -	Stage Total	\$ -

Total plan must be executed in 6th months from time of grant agreement execution, or less. All funds cannot be expended prior to final deliverable being met.



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: June 9, 2021

RE: Government Restricted Municipality Planning Grant implementation funding-Phase II

Summary

The Members are asked to approve:

1. The creation of the Government Restricted Municipality (GRM) Planning Grants Program, phase II, to make grant funding available for technical planning applied to economic, land-use, and other technical development plans as described in long-term strategic action plans completed in phase I.
2. For this phase II, authorize \$2,250,000 (two million two hundred fifty thousand) in funding from the planning grant allocation as listed in the Economic Recovery Act of 2020
3. Delegated authority to Authority staff (Chief Executive Officer, Chief Community Development Officer) to authorize program start date pending completion of Phase I

This funding opportunity is issued by the New Jersey Economic Development Authority (“Authority”, “EDA”) as the part of Governor Murphy’s campaign to build a stronger and fairer New Jersey and to facilitate recovery from the COVID-19 pandemic with substantive investments in New Jersey’s people, communities, Main Streets, and businesses.

This funding will enhance GRMs’ ability to finance gaps in technical planning that restrain projects from moving forward. The grants will enable GRMs to complete technical planning necessary for projects identified in phase I strategic action plans.

Municipalities will be scored and evaluated on their ability to identify, analyze, develop and execute the technical planning for projects as listed in phase I strategic action plan and prioritized for catalytic development in this application.

Background on Government Restricted Municipality Planning Grants, Phase II

Using funding from the New Jersey Economic Recovery Act of 2020 (“Economic Recovery Act”), phase II of the Government Restricted Municipality Planning Grants Program will maximize New Jersey municipalities’ growth potential by providing implementation funding for technical planning gaps identified in the phase I strategic action plans for Government Restricted Municipalities (Atlantic City, Paterson, Trenton). This planning funding is intended to focus the flow of private capital and economic investment into GRMs that have historically faced economic challenges and build the local capacity needed to successfully execute additional projects in the future.

Eligibility for phase II will be limited to GRMs that have either developed strategic action plans or had such plans developed for them under Phase I. Phase II grants will be awarded to the GRMs of up to \$250,000 per project. Each GRM may be awarded up to \$750,000 for projects listed in the phase I plan. Applicants may apply for any amount up to \$750,000. Awards will be made only to plans that meet the requisite score of 50 out of 100

Government Restricted Municipality Planning Grants

In line with Governor Phil Murphy’s commitments to investing in communities and investing in people, the Government Restricted Municipality Planning Grants Program seeks to assist communities in leveraging planning capacity to meet the community’s goals.

The focus of the grant’s work product must be a GRM. GRM is defined in Sections 55 and 69 of the Economic Recovery Act as *a municipality in this State with a municipal revitalization index distress score of at least 75, that met the criteria for designation as an urban aid municipality in the 2019 State fiscal year, and that, on the effective date of P.L. 2020, c. 156 subject to financial restrictions imposed pursuant to the Municipal Stabilization and Recovery Act P.L.2016, c.4, (N.J.S.A. 52:27BBBB-1 et seq.), or is restricted in its ability to levy property taxes on property in that municipality as a result of the State of New Jersey owning or controlling property representing at least 25 percent of the total land area of the municipality or as a result of the federal government of the United States owning or controlling at least 50 acres of the total land area of the municipality, which is dedicated as a national natural landmark.*

During phase II of the program, the NJEDA will provide catalytic gap funding to GRMs to meet the technical planning gaps for projects as identified in the phase I strategic action plan. Recipients of phase II grants will be tasked with project selection from actionable projects listed in the strategic action plan created using phase I funding as well as contracting for and oversight of technical planning identified in the phase I strategic plan.

The NJEDA intends to award up to \$2,250,000, structured as multiple grants of \$250,000 for each project up to \$750,000, to each GRM for projects that qualify pursuant to the criteria listed below. Grants are focused on funding gaps in project-specific technical planning enumerated in the phase I strategic action plan. Awards will be made to GRMs for projects proposed in the strategic action plan and will be funded based on project prioritization plan. The project prioritization plan will detail the catalytic projects and the technical planning gaps in the projects. The projects included in Phase II will be selected by the GRM in a competitive fashion based on municipal goals. After competitive municipal evaluation, projects will be prioritized in funding order by the GRM. Projects included in the prioritization plan must be originated from the strategic action plan. Included projects in Phase II must be evaluated by municipal competition which must be on based criteria relevant to the municipal goals for equitable community focused economic development. The GRM will select the number, type, scope and municipal priority of projects to be included in the plan. The projects will be funded based on the project prioritization plan and continue in descending order until grant funds are exhausted. These awards will help to position GRMs to catalyze stalled transformative projects, attract private and public investment, and add to the pipeline of community focused, shovel ready opportunities.

Phase II opening will be decided by delegated staff authority on a date on or after the deadline for Phase I plan receipt by the Authority. Expected opening date for Phase II is six months or more after the issuance of the grant Notice of Funding Award. Proposals will be accepted for forty five calendar days after the Phase II opening. Proposals will then be reviewed for completeness and scored by an evaluation committee based on the criteria set forth in Section VI. The committee will make a recommendation to the Board for award. Only proposals with scores equal to or greater than 50 will be presented to the Board for review and award.

The expected date of the grant awards will be June 2022. The term of the grants shall be for a period of six (6) months. The six month term will begin on the date of the execution of the grant agreement by the Authority. One extension of one (1) month may be provided at the sole discretion of the Authority.

I. Scope of Work

The Authority is seeking applications directly from GRMs with completed strategic action plans developed in Phase I. The applications and use of grant funds must be focused on technical planning for projects listed in the strategic action plans. The technical planning funding is designed to bridge gaps in business analysis, civic engagement, engineering, architectural, environmental, scientific and media planning, research and analysis for projects identified in the strategic action plans that require technical planning work. No awards will be made for construction hard costs or property acquisition. No funding for project costs other than technical planning will be awarded or disbursed. No funding will be awarded for the administration or supervision of the grant and/or associated projects. Applicants must submit a prioritized project list with technical assistance gaps identified. The prioritized project list must include projects as listed in the strategic action plan. The applicant may choose the number, scope, type and municipal prioritization of the projects. Applicants will be awarded up to \$750,000 per GRM in

tranches of up to \$250,000 per project. All tranches must be disbursed by the completion of the grant term. Applications must meet or exceed the minimum score of 50 out of 100 to be eligible for award.

Applicants may hire or subcontract with outside experts, firms, public interest research groups, other government entities, and higher educational institutions and may consider any approach or combination of approaches to achieve the program goal of completing technical planning on catalytic projects described in the strategic action plan.

II. Eligible Applicants

Qualified applicants are defined as GRMs that have completed or received a strategic action plan developed under Phase I of the Program.

All applicant proposals must be focused on technical planning needed for projects listed in the strategic action plan.

A municipality may only submit one application. The municipality will be the sole entity responsible for meeting the deliverables of the contract

III. Application

The Applicant shall describe its approach to undertaking a series of technical planning efforts in order to catalyze community supported projects listed in the Phase I strategic action plan by clearly explaining how the planning project will work to accomplish the goals of the Government Restricted Municipality Planning Grants Program. The GRM will submit one application in which it has multiple project plans derived from the Phase I strategic action plan. The project plans will be compiled in the project prioritization list. The list will include a project priority rank as well as project summary.

In line with these goals, the application must contain, at a minimum, the required information identified below (as applicable):

- Completed Application Information Form (Attachment A) and any additional information related to the Scope of Work that the applicant feels is relevant but not specifically requested on Attachment A, to be submitted with the Application.
- Completed Budget Estimate that demonstrates how the full project budget is being utilized. The budget must detail costs, which include, but are not limited to, labor costs, contract/technical services and support costs, and material costs. The budget must project out that the final deliverable will be met within six (6) months of grant execution. The budget will be outlined in a fee schedule.

- Completed municipal strategic action plan funded by Government Restricted Municipality planning grant, phase I
- Completed project prioritization list listing
 - projects as included from completed municipal strategic action plan and selected by the municipality in a competitive format
 - technical planning gaps inherent in the projects
 - projects must be listed in order of municipal funding priority
- Demonstration of an ability to contract for professional services for technical planning needs.
- Demonstration of a stakeholder engagement process and strategy in the selection of projects that will receive technical planning funding.
- Examples or information reflecting prior experience of applicant in oversight and monitoring of multiple technical planning projects of a similar size and scope.

IV. Disbursement

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

Project funding will be disbursed based on the GRMs' prioritization of qualifying projects for technical planning assistance. If awarded, each of the three GRMs will be funded up to \$750,000 for the completion of technical planning needs in projects included in the Phase 1 strategic action plan. Any one project is capped at \$250,000.

Each disbursement must be accompanied by a project report. Disbursements will only be made after the submission and approval by the Authority of project reports.

At a minimum, the project report referenced above should include:

- Summary of projects to be funded with this disbursement.
- Summary of funds to be expended.
- Summary of funds expended to date.
- Narrative detailing technical planning funding gap on each project proposed for funding
- Full and complete copies of any contracts for technical planning.
- Milestones achieved and overall progress toward completion of final plan.

V. Evaluation/Scoring Criteria

Proposals will be evaluated by a cross-organizational Evaluation Committee composed of the Authority's staff, management, and possibly other state agencies/Department Subject Matter Experts (SME's) to evaluate, score, and rank applications.

Proposals will be evaluated and scored on each of the criteria below according to a scale of one to twenty (1 – 20) based on the information submitted in applications as set forth in Section III - Technical Proposal.

It is the policy of the New Jersey Economic Development Authority that to be considered for award, a Proposer must achieve or exceed an overall score of fifty (50) with 100 being the highest rating. The Authority shall be under no obligation to make an award to a firm which does not achieve this minimum scoring threshold.

Evaluation Criteria -

The point scale is as follows for:

- 0 points - Absence of ability to meet the criteria.
- 1 – 7 points – Minimal ability to meet the criteria.
- 8 – 11 points – Satisfactory ability to meet the criteria.
- 12 – 17 points – Exceptional ability to meet the criteria.
- 18 – 20 points - Unique ability to meet the criteria.

- 1) Demonstration of the GRM's ability to achieve the goals of bridging technical planning gaps for catalytic projects listed in the strategic action plan developed under Phase I.
- 2) Demonstration of the ability to contract technical planning experts in a range of planning and economic development disciplines.
- 3) Demonstration of the ability to conduct oversight and project management for subcontractors.
- 4) Demonstration of an ability to design a technical planning deployment strategy for multiple catalytic municipal projects.
- 5) Demonstration of a defined collaborative stakeholder engagement process and strategy.

Recommendation

The Members are asked to approve:

1. The creation of the Government Restricted Municipality (GRM) Planning Grants Program, phase II, to make grant funding available for technical planning applied to economic, land-use, and other technical development plans as described in long-term strategic action plans completed in phase I.
2. For this phase II, authorize \$2,250,000 (two million two hundred fifty thousand) in funding from the planning grant allocation as listed in the Economic Recovery Act of 2020
3. Delegated authority to Authority staff (Chief Executive Officer, Chief Community Development Officer) to authorize program start date pending completion of Phase I



Tim Sullivan
Chief Executive Officer

Application Information Form-Attachment A Government Restricted Municipality Planning Grants-Phase II

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

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

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

SECTION I: GENERAL INFORMATION

APPLICANT NAME

APPLICANT ADDRESS:

APPLICANT CONTACT:

APPLICANT E-MAIL ADDRESS:

APPLICANT CONTACT PHONE NUMBER:

If applicable, please list any other partners participating on this proposal.

SECTION II: PROJECT DETAILS

1. Project Title (10 Word Maximum):

2. Project Details:

Please attach a narrative that describes the existing conditions of the focus GRM, specifically:

- A. Municipal Focus
- B. Existing Body of Planning Work
- C. Recently completed major projects in GRM
- D. Additional Planning work in progress

3. Project/Plan Details:

Please submit, as an attachment to your application, a narrative that describes the planning project to be undertaken, specifically:

- A. Project/Plan Description, including specifically how the grant funding will be used to help the Government Restricted Municipality plan solutions will position the GRM to activate projects as part of an overall economic development strategy:
 - a. Narrative detailing how respective plan will position the GRM to activate projects as part of an overall economic development strategy.
 - b. Narrative detailing how plan will enhance local civic capacity to attract socially responsible investment.
 - c. Narrative demonstrating a viable path to implementation and show a collaborative stakeholder engagement process.
 - d. Detailed narrative identifying any specific difficulties, challenges, or issues that have the potential to impede project investment in their GRM and
 - e. Detailed Narrative on how the municipality will approach series of technical planning efforts in order to catalyze community supported projects listed in the Phase I strategic action plan

- B. Identification of Project Purpose and Merits, which may include:
 - a. Project effort's ability to achieve the goal of a long term strategic action plan.
 - b. GRM-specific needs and challenges.
 - c. GRM anchor institution and local stakeholder needs and challenges.
 - d. Ability to consider and mitigate any past difficulties in technical planning that created challenges for GRM
 - e. Ability to identify technical planning gaps in proposed catalytic projects identified in the phase I strategic action plan
 - f. Ability to contract for technical planning services
 - g. Examples or information reflecting prior experience of applicant in oversight and monitoring of multiple technical planning projects of a similar size and scope.

- C. Narrative detailing plans to engage local residents and businesses in planning efforts

- D. Explain the degree to which the funding of technical planning gaps identified in Phase I plan will advance the ability of the municipality to attract private market or other government investment to stalled projects identified in the strategic action plan.

4. Applicant Background & Viability:

Please submit, as an attachment to your application, a narrative that describes the following information about the applicant and any associated partners:

- A. Explanation of any inherent structural challenges the municipality
- B. Please provide information demonstrating the ability of the applicant to execute the planning project. This may include, but is not limited to:
 - a. Description of the project's milestones and how they will be measurable and achievable.
 - b. Experience in successful completion of planning and or economic development projects similar in size and scope to the proposed project with a focus on meeting technical planning needs
 - c. Description of experience, capacity, and skills of planning team
 - d. Information relating to organization and/or personnel that will work on the proposed planning, including contact names and telephone numbers, evidence of the applicant's qualifications, and capabilities to perform the services required by this application, as well as resumes or bios for all key personnel who will or who are expected to perform the work outlined in the application.
 - Any information specific to personnel should emphasize relevant qualifications and experience of these individuals in successfully completing contracts of a similar size and scope, relative to the Scope of Work in this application.

SECTION III: Completed Municipal Strategic Action Plan

To be considered eligible for a grant award, proposals must have a completed municipal strategic action plan funded by Government Restricted Municipality planning grant, phase I

Please provide a copy of the municipal strategic action plan and attach to this proposal

SECTION IV: Project Prioritization Plan

Please provide a completed project prioritization list listing:

- projects as included from completed municipal strategic action plan and selected by the municipality in a competitive format
- technical planning gaps inherent in the projects
- projects listed in order of municipal funding priority

ECONOMIC GROWTH

PORT INFRASTRUCTURE



TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: June 9, 2021

SUBJECT: Modified Approval of the Authority's Letter of Intent (LOI) with PSEG

REQUEST

The Members of the Board are asked to approve the continuation of early site works for the New Jersey Wind Port (NJWP) project beyond June 30, 2021.

In April 2021 the Board approved an amendment to the Authority's existing Letter of Intent (LOI) with PSEG Nuclear ("PSEG") to include certain early site works and to extend the LOI cooperation period to December 31, 2021. In order to manage the Authority's cost exposure prior to securing property rights Staff committed to report back to the Board on progress towards a Ground Lease; and to seek re-approval to continue early works if a lease was not in place by June 30, 2021.

Staff are pleased to report that negotiations have progressed materially since April with the draft lease currently undergoing final legal review by both parties. The lease will then be submitted to the Office of State Comptroller (OSC). Allowing for a 30-day OSC review period, Staff anticipate seeking Board approval of the lease in July. In this context, Staff are seeking Board approval to continue early works beyond June 30, 2021, in order to preserve the development schedule.

SUMMARY

In April 2021, the Board approved an amendment to the Authority's existing Letter of Intent (LOI) with PSEG Nuclear ("PSEG"), which included:

- An expansion of the LOI's scope to include certain critical-path early site works and associated permitting and project management costs;
- An extension of the LOI cooperation period from May 31, 2021 until December 31, 2021, allowing for the completion of early site works under the LOI; and
- A clarification of the timing of reimbursement for PSEG's costs incurred under the LOI, excluding early site works, to the earlier of the cooperation period expiration date (December 31, 2021), or the Authority securing financing or a funding appropriation.

To protect the State's interests given the resultant procurement of early works subcontractors, the Memorandum was considered and approved in Executive Session.

The amendment of the LOI to include certain early works, such as permitting activities, environmental testing, and limited site preparation, is necessary to preserve the target of commencing core construction in late 2021; and in-turn preserving the target of substantial completion of Phase One by the end of 2023. At the time of the April Board, Staff anticipated executing a Ground Lease with PSEG by June 30, 2021. In order to manage cost exposure prior to securing property rights Staff committed to (1) cease early works if a Ground Lease was not in place by June 30, 2021 and (2) update the Board on progress towards lease finalization.

While a Ground Lease is not yet in place Staff are pleased to report that negotiations have progressed materially since April with the draft lease currently undergoing final legal review by both parties. The lease will then be submitted to the Office of State Comptroller (OSC). Allowing for a 30-day OSC review period, Staff anticipate seeking Board approval of the lease in July.

In this context, Staff are seeking a modified approval of the LOI amendment in order to continue early site works beyond June 30, 2021 and to preserve the Authority's overall development schedule, with early works required to be completed before core construction can commence.

RECCOMENDATION

The Members of the Board are asked to approve the continuation of early site works for the New Jersey Wind Port (NJWP) project beyond June 30, 2021.

In April 2021 the Board approved an amendment to the Authority's existing Letter of Intent (LOI) with PSEG Nuclear ("PSEG") to include certain early site works and to extend the LOI cooperation period to December 31, 2021. In order to manage the Authority's cost exposure prior to securing property rights Staff committed to report back to the Board on progress towards a Ground Lease; and to seek re-approval to continue early works if a lease was not in place by June 30, 2021.

Staff are pleased to report that negotiations have progressed materially since April with the draft lease currently undergoing final legal review by both parties. The lease will then be submitted to the Office of State Comptroller (OSC). Allowing for a 30-day OSC review period, Staff anticipate seeking Board approval of the lease in July. In this context, Staff are seeking Board approval to continue early works beyond June 30, 2021, in order to preserve the development schedule.



Tim Sullivan, CEO

Prepared by: Jonathan Kennedy

INCENTIVE PROGRAMS

**OFFSHORE WIND ECONOMIC DEVELOPMENT TAX
CREDIT PROGRAM**



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: June 9, 2021

Subject: Approval of Amendments to Existing Offshore Wind Economic Development Tax Credit rules

Summary:

Members of the Board are requested to approve amendments to existing Offshore Wind Economic Development Tax Credit rules and to authorize staff to file the amended rules for promulgation in the New Jersey Register, subject to final review and approval by the Office of the Attorney General and the Office of Administrative Law, and to be adopted and become effective after the public comment period.

Background on the ERA:

On January 7, 2021, Governor Phil Murphy signed the New Jersey Economic Recovery Act of 2020 (ERA) into law. The ERA consists of a package of tax incentives, financing, and grant programs that address the ongoing economic impacts of the COVID-19 pandemic and build a stronger, fairer New Jersey economy.

The ERA includes the creation or modification of 15+ economic development programs, including:

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

Background on the Offshore Wind Economic Development Tax Credit Program:

The Offshore Wind Economic Development Act, P.L. 2010, c. 57, as amended by P.L. 2018, c. 17, authorized the New Jersey Economic Development Authority (“NJEDA” or “Authority”) to approve up to \$100 million in tax credits for the development of certain qualified wind energy facilities in wind energy zones.

On October 17, 2018 the Authority adopted [special new rules](#) to implement the program. These rules were subsequently readopted on October 17, 2019 following the completion of the standard rulemaking and comment process.

The current Offshore Wind Economic Development Tax Credit Program, as amended by the ERA, provides tax credits for capital investment in a qualified wind energy facility located in New Jersey. The program is designed to spur employment growth and offshore wind supply chain development as a result of capital investment in land-based offshore wind industry projects.

In order to receive tax credits through the Offshore Wind Economic Development Tax Credit Program, a business must:

- Make or acquire capital investments totaling at least \$50 million in a qualified wind energy facility. If the business is a tenant, the business must lease an area of the qualified wind energy facility that represents at least a \$17.5 million capital investment in the facility.
- Create a minimum of 300 new full-time jobs over the four-year commitment period. A tenant may meet the employment requirements with other tenants at the qualified wind energy facility. A business may create between 150 and 300 new full-time jobs over the commitment period and receive a prorated award.
- Demonstrate a net positive economic benefit to the State.

Limited by a net positive economic benefits test, the tax credits are equal to 100 percent of the business’s qualified capital investments. The credits can be used against corporation business or insurance premiums tax.

The calculation of new full-time employees may include select positions resulting from equipment supply coordination agreements with equipment manufacturers, suppliers, installers, and operators associated with the supply chain required to support the qualified wind energy facility.

Tenants in qualified wind energy facilities may also receive tax credits, if they occupy space in a qualified wind energy facility that proportionally represents at least \$17.5 million of the capital investment in the facility, and, employ at least the minimum number of new, full-time employees in that facility.

Businesses must apply for the tax credits by July 1, 2025 and satisfy the capital investment and employment conditions for award of the credits by July 1, 2028.

Revisions to the Offshore Wind Economic Development Tax Credit Program Rules

The NJEDA is proposing amendments to the Offshore Wind Economic Development Tax Credit Program to implement certain statutory revisions pursuant to section 109 of the ERA.

The primary changes enacted by the law include:

- Adjusting the period over which tax credits are earned and paid out;
- Adjusting the minimum number of jobs required for the program by:
 - Allowing for the Authority to create a pro-rated formula to award credits to projects that create between 150-300 new full-time jobs;
 - Allowing for a project to ramp-up jobs over time;
 - and
- Expanding the eligible geography for the program from seven counties to the entire state.

In addition to providing clarity on how to address the above statutory changes, the proposed amendments also include policy updates on eligible costs, calculating net benefits test parameters, and fees.

Adjusting the period over which tax credits are earned and paid

The Program previously awarded tax credits for approved and certified projects over the course of ten years. The new statute states that the award of a tax credit shall be structured so that the award shall be comprised of four years, each equaling 25 percent of the total value of the tax credit. The statute also states that the amount of the credit shall be taken over a five-year period, at the rate of one-fifth of the total amount of the business's credit for each tax accounting or privilege period of the business.

Accordingly, the proposed amendments to the rules provide the following:

- The four-year period, defined as the *commitment period*, and the corresponding one-fourth award amounts serve as the mechanism by which the award is earned.
- The five-year period, defined as the *eligibility period*, and the corresponding one-fifth award amounts, serve as the mechanism by which the tax credit is taken.

Thus, a business would earn the tax credits over a four-year period but receive the tax credits over the course of five years at a rate of one-fifth of the total amount of the business's credit. However, if a business commits to staying in the State for a longer period of time (e.g., net benefits are calculated based on a 20-year period since the business is signing a 20-years lease), the net benefit calculation will be extended to match the site commitment up to 20 years. In that case, the project commitment period would be extended for the full net benefit term, and the project would be subject to recoupment of tax credits if the business did not meet its commitment requirements. (See below for more details on recoupment.)

Allowing for projects to ramp up jobs over time

The statute and rules previously required that a project create all new full-time jobs before a project could be awarded tax credits. The new statutory language creates a ramp-up mechanism that allows the business to start earning and being paid tax credits if they meet certain minimum numbers of jobs over the first four years of their project. This ramp-up feature is implemented through the definition of “Minimum number of new, full-time employees,” as follows:

- *For the first year of the award, at least a cumulative 100 new, full-time employees compared to the number of full-time employees at the time of application.*
- *For the second year of the award, for a privilege period or taxable year following the first year of the award, at least a cumulative 150 new, full-time employees compared to the number of full-time employees at the time of application.*
- *For the third year of the award, for a privilege period or taxable year following the second year of the award, at least a cumulative 200 new full-time employees compared to the number of full-time employees at the time of application.*
- *For the fourth year of the award, for a privilege period or taxable year following the third year of the award, at least a cumulative 300 new full-time employees compared to the number of full-time employees at the time of application.*

Minimum Number of New Jobs – allowing for projects between 150-300

The statute previously required a minimum threshold of 300 new, full-time employees at a qualified wind energy facility to be eligible for the program. The statute now allows for projects with less than 300 but more than 150 full-time employees to be eligible, but to receive a prorated award. The proposed rules established the prorated award formula as follows:

The amount of the credit allowed for projects approved with less than 300 new full-time employees and at least 150 new full-time employees shall, except as otherwise provided, be equal to the following percentage of the capital investment:

- *150 new, full-time employees compared to the number of full-time employees at the time of application for an award calculated at 50 percent of the capital investment.*
- *200 new, full-time employees compared to the number of full-time employees at the time of application for an award calculated at 65 percent of the capital investment.*
- *250 new, full-time employees compared to the number of full-time employees at the time of application for an award calculated at 85 percent of the capital investment.*

Accordingly, the rule amendments contains a new definition of “Prorated annual minimum number of new full-time employees” to take into account the above minimum for prorated award.

Expanding the eligible geographies

The statute previously defined the eligible geographies only as the southern seven counties in the state. The new statutory language expands that definition to include all counties in the state.

Updates to the Net Positive Economic Benefits Test Parameters:

Historically the Authority has undertaken the net positive economic benefit test analysis within a variety of past programs relying upon a proprietary model that was developed by a third-party, but largely managed in-house. In the interest of greater transparency and consistency the Authority has determined the best approach moving forward for such analysis is to rely upon an external third-party model – IMPLAN – that would not need to be updated or maintained by the

NJEDA. Staff presented the model and its use to the Board as part of the approval of the Emerge program.

The timeframe for the calculation of the net positive economic benefits test starts with the commitment period, which is now four years. As mentioned above, if the company demonstrates a longer commitment to the site, the net benefit period can be extended for the site commitment (up to 20 years) and the company will be required to extend the commitment period correspondingly. If the company does not satisfy its commitment during this extended commitment period, the company is subject to recoupment provisions. The amount of the tax credit award recouped is based on the additional amount of tax credits received due to the extended net benefit period from the time the company fails its commitment through end of the extended commitment period.

The requirement for the net positive economic benefit to equal at least 110 percent of the approved tax credit allocation amount remains the same. The Statutory intent of this program is extremely targeted providing significant subsidy in the form of up-front cost recovery of capital investment to promote catalytic growth in a nascent industry in the State. Given this intent and the relative programmatic difference of a capital investment-based program to a job based program, such as Emerge, the decision was made to leave the requirement for the net positive economic benefit unchanged.

For the purposes of calculation of the net positive economic benefit test, the program previously considered only direct benefits. The proposed rules will now consider indirect benefits if a business does not include new full-time positions resulting from an equipment supply coordination agreement in the calculation of its minimum number of new, full-time employees.

Additionally, the rule amendments make a change in the eligible capital investment that can be included in the net benefit test. Previously, eligible capital investment before application was not included in the net benefit. The rule amendments propose including all eligible capital investment in the net benefit test. While a departure from historical policy within other NJEDA incentive programs, this is consistent with the legislature's decision not to include any material factor finding to support an award.

Clarification of Soft Costs:

The definition of soft costs has been changed to include all costs associated with financing, design, engineering, legal, or real estate commissions, including but not limited to, architect fees, permit fees, loan origination and closing costs, construction management, and freight and shipping delivery but not including early lease termination costs, air fare, mileage, tolls, gas, meals, packing material, marketing, temporary signage, incentive consultant fees, Authority fees, loan interest payments, escrows, or other similar costs. The change is intended to clarify what the Authority will not allow in its evaluation of soft costs that may be included in determining investment size and potential tax credit awards. This is consistent with similar policy put forth within the recently presented Emerge rules.

Rulemaking Process and Accepting Applications

If the Board approves the attached rule amendments, they will be published in the New Jersey Register for a 60-day public comment period, as per normal Administrative Procedures Act process. After the public comment period, the Authority must respond to any formal public comments, and then submit final rule amendments for adoption.

The Authority may accept applications based upon any draft rule amendments approved for publication by the Board prior to the completion of the full Administrative Procedures Act process. However, all applicants will be at risk and will be required to comply with the requirements of the final adopted rules upon the conclusion of the formal comment process.

Compliance with Executive Order 63

In accordance with the Executive Order 63 directive to ensure outreach efforts are made to the public and affected stakeholders for agency rulemaking, the Authority issued a news release advising the public that the draft Offshore Wind Economic Development Tax Credit Program rules were available for review and of the opportunity to provide informal input. NJEDA staff also alerted key offshore wind industry stakeholders directly of this opportunity via email.

Additionally, the public were able to submit written feedback through the NJEDA's Economic Recovery Act transparency website (www.njeda.com/economicrecoveryact) or through the newly established email account (offshorewindtaxcredit@njeda.com) from April 22th through April 29th, 2021.

Chief Compliance Officer Certification of Draft Rule Proposal

Pursuant to Section 101(a) of the Economic Recovery Act, the Authority is required to appoint a Chief Compliance Officer (CCO) to manage the Division of Portfolio Management and Compliance in the Authority. Among other responsibilities, the CCO shall:

(4) prior to the adoption of any rule or regulation by the authority or the board related to the general administration of the programs administered by the authority pursuant to [the ERA] or any other regulation specifically related to the recapture of economic development incentive award values, review and certify that the provisions of program rules or regulations provide the authority with adequate procedures to pursue the recapture of the value of an economic development incentive in the case of substantial noncompliance, fraud, or abuse by the economic development incentive recipient, and that program rules and regulations are sufficient to ensure against economic development incentive fraud, waste, and abuse.

As the Authority has designated Bruce Ciallella as the CCO and in that capacity, Mr. Ciallella has reviewed the proposed amendments to the rules for the Offshore Wind Economic Development Tax Credit Program and is prepared to sign the certification, subject to the Board taking action to approve the same for submission to the New Jersey Office of Administrative Law for publication in an upcoming issue of the New Jersey Register.

Fees

Prior to establishing the proposed fee structure for this program as outlined in the proposed new rules, the Authority conducted an internal review to estimate what the administrative costs to the authority are likely to be to administer the Offshore Wind Economic Development Tax Credit Program. The Authority considered areas cross-organizationally where the Offshore Wind Economic Development Tax Credit Program (as well as other new or modified programs under the ERA) may require staff time, and the estimated percentage of staff time that would be required.

The specific fee structure is outlined in the proposed amendments to the rules, on a tiered basis based on the number of new full-time employees. In response to criticism by the Comptroller that within previous programs where fees were based on a percentage the Authority had a perceived conflict of interest, tiered flat-fee model is being proposed. The two tiers are (i) projects that create less than 300 but more than 150 full-time employees at the qualified wind energy facility, and (ii) projects that create a minimum of 300 full-time employees at the qualified wind energy facility. An applicant for the Offshore Wind Economic Development Tax Credit Program is responsible for a one-time non-refundable application fee on a tiered basis based on the number of new full-time employees. Applicants are also responsible for a non-refundable fee, on a tiered basis, at the time of execution of the non-binding letter of intent. Further, applicants are responsible for annual servicing fees, fees to apply for a tax credit transfer and when seeking any administrative changes, additions or modifications to the tax credit, on a tiered basis, based on the number of full-time employees.

Please refer to the proposed new rules in Appendix A for information on the specific fees and tiered fee amounts.

Recommendation:

The Members of the Board are requested to file the amended rules for promulgation in the New Jersey Register, subject to final review and approval by the Office of the Attorney General and the Office of Administrative Law, and to be adopted and become effective after the public comment period.



Tim Sullivan, CEO

Prepared by: Pallavi Madakasira

Appendix A: Offshore Wind Economic Development Tax Credit Rules

Appendix A: Offshore Wind Economic Development Tax Credit Rules

DRAFT

OTHER AGENCIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Authority Assistance Programs

Offshore Wind Economic Development Tax Credit Program

Proposed Amendments: N.J.A.C. 19:31-20.1 through 20.7, 20.9, 20.10 and 20.12 through 15

Proposed Repeal: N.J.A.C. 19:31-20.8

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

Authority: P.L. 2020, c. 156.

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

Proposal Number: PRN 2021-_____.

Submit written comment by _____, 2021, to:

New Jersey Economic Development Authority
P.O. Box 990
Trenton, NJ 08625-0990
jgenovay@njeda.com

The agency proposal follows:

Summary

The New Jersey Economic Development Authority (“NJEDA” or “Authority”) is proposing amendments to the Offshore Wind Economic Development Tax Credit Program to implement certain statutory revisions pursuant to section 109 of the recently enacted New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156.

Specifically, the primary changes enacted by the law include: 1) adjusting the period over which tax credits are earned and paid out; 2) revising the minimum number of jobs required for the program by allowing the Authority to create a pro-rated formula to award credits to projects that create between 150-300 new full-time jobs and allowing for a project to ramp-up jobs over time; and 3) expanding the eligible geography for the program from seven counties to the entire State.

In addition to providing clarity on how to address the above statutory changes, the proposed rules also include policy updates on eligible costs, calculating net benefits test parameters, and fees.

The following summarizes the amendments proposed for the rules implementing the Offshore Wind Economic Development Tax Credit Program:

N.J.A.C. 19:31-20.1 Applicability and scope – Deletes the term “wind energy zone,” and adds the word “State” to reflect the expansion of geographic eligibility for tax credits related to qualified wind energy facilities in New Jersey.

N.J.A.C. 19:31-20.2 Definitions – The Authority is making extensive revisions to bring definitions into line with the Act and the EDA’s procedures for making awards, and to add clarity.

The definition of “approval letter” is revised to delete the phrase “10-year” pertaining to the length of the eligibility period; insert the phrases, “the process by which affiliates contributing employment or capital investment may be added,” “the requirement for the project site to remain a qualified wind energy facility,” “events that would trigger reduction and forfeiture of tax credits,” and “tax clearance certificate requirements.” Additional changes to “approval letter” would add a provision “to permit audit(s) of the business’s payroll records, and any other evidence and documentation supporting the certifications pursuant to N.J.A.C. 19:31-20.7(f), the annual reports pursuant to N.J.A.C. 19:31-20.14, from time to time, as the Authority deems necessary.” These changes bring the rule language into conformance with current usage. The 10-year period was revised by the Act, and so is no longer relevant.

The definition of “capital investment” also is revised to add language specifying that “soft costs shall not exceed 20 percent of all capital investment,” to conform with Authority policy and other incentive programs. In addition to conform with the Act, the definition of “eligibility period” is amended to delete the phrase “10-year” and add the phrase “five-year,” as the period in which a business may claim an offshore wind economic development tax credit.

A new definition of “commitment period,” which is the four-year period beginning on the same date as the eligibility period,” has been added because the statute states that the credit is earned over a period of four years.

The definition of “capital investment” also is revised to add language specifying that “soft costs shall not exceed 20 percent of all capital investment,” to conform with Authority policy and other incentive programs. In addition to conform with the Act, the definition of “eligibility period” is amended to delete the phrase “10-year” and add the phrase “five-year,” as the period in which a business may claim an offshore wind economic development tax credit.

Three sets of amendments relate to employees. The portion of the definition of “full-time employee” which states that “full-time employee” shall not include residents of another state whose income is not subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., “unless that state has entered into a reciprocity agreement with the State of New Jersey,” is

amended to delete the provision “provided that any employee whose work is provided pursuant to a collective bargaining agreement with a business in the wind energy zone may be included.” The change was made because the language was deleted from the prior law by the Act. The definition of “full-time employee at the qualified wind energy facility” would be revised to delete the terms “in New Jersey” and add the terms “at the facility” to be consistent with the programmatic requirements as it pertains to the eligibility requirements for capital investment in the qualified wind facilities. The third change adds a new definition of “minimum number of new, full-time employees,” which requires a graduated number starting with 100 in the first year, rising to 300 in the fourth year. The changes were required to conform with the Act.

The definition of “letter of compliance” has been amended to change the related citation from N.J.A.C. 19:31-20.14(d) to 19:31-20.13(e). The definition of “project” would be altered by deleting the phrase “within a designated wind energy zone,” reflecting its elimination from the prior statute by the Act. Amendments also revise the definition of “qualified offshore wind project” to include “which is a wind turbine electricity generation facility in the Atlantic Ocean and connected to the electric transmission system in this State, and includes the associated transmission-related interconnection facilities and equipment, and approved by the New Jersey Board of Public Utilities, or any successor entity, pursuant to section 3 of P.L. 2010, c. 57 (N.J.S.A. 48:3-87.1).” The addition is identical to the language in N.J.S.A. 48:3-51, and is intended for ease of reference.

A new definition of “prorated minimum number of new, full-time employees” for projects that are not expected to result in employment of 300 new, full-time employees, has been added. This definition addresses the requirement in the Act that businesses with between 150 and 300 new, full-time jobs may receive an award based on a pro-rated formula developed by the Authority.

A new definition of “prorated annual minimum number of new, full-time employees” for projects that are not expected to result in employment of 300 new, full-time employees, has been added. This definition builds upon the new definition of “prorated minimum number of new, full-time employees” and details what the annual obligations shall be as the project ramps up.

The definition of “qualified wind energy facility” has been amended to delete the phrase “and that are located in a wind energy zone because the Act eliminated that requirement. The definition adds that “to the extent a qualified wind energy facility requires improvements to existing non-wind facilities, only the improvements shall be part of the qualified wind energy facility.” This amendment was made to clarify that the qualified wind facility shall not include facilities that existed prior to the construction of the qualified wind facility, such as a quay, but may include improvements to an existing facility to accommodate the qualified wind facility, such as improvements that strengthen the capacity of a quay.

The definition of “soft costs” would be changed by deleting the existing provision “all costs associated with financing, design, engineering, legal, real estate commissions, furniture, or office equipment with a useful life of less than five years, provided they do not exceed 20 percent of total capital investment.” That phrase is replaced with “all costs associated with financing, design, engineering, legal, or real estate commissions, including but not limited to, architect fees, permit fees, loan origination and closing costs, construction management, and

freight and shipping delivery but not including early lease termination costs, air fare, mileage, tolls, gas, meals, packing material, marketing, temporary signage, incentive consultant fees, Authority fees, loan interest payments, escrows, or other similar costs". The change is intended to clarify what the Authority will not allow in its evaluation of soft costs that may be included in determining investment size and potential tax credit awards.

N.J.A.C. 19:31-20.3 Eligibility criteria – N.J.A.C. 19:31-20.3(a) deletes the phrase “to be considered” regarding eligibility for an offshore wind economic development tax credit for a qualified wind energy facility in order to delete excess verbiage.

N.J.A.C. 19:31-20.3(a)1i revises the term “indicate” to “indicates.” N.J.A.C. 19:31-20.3(a)1ii deletes “300” and replaces “300” with “the minimum number of” as pertains to the requirement to employ certain new full-time employees at the qualified wind energy facility or through an equipment supply coordination agreement and adds “except that any business with the prorated annual minimum number of new full-time employees will be eligible for a prorated award,” in order to comply with the Act.

N.J.A.C. 19:31-20.3(a)2i deletes the terms “as calculated” pertaining to certain capital investments in the qualified wind energy facility in order to delete excess verbiage N.J.A.C. 19:31-20.3(a)2ii inserts the terms “qualified wind energy” before “facility” for clarity’s sake. N.J.A.C. 19:31-20.3(a)2iii deletes the terms “at least 300,” replacing them with “the minimum number of” as pertains to the employment requirement of new full-time employees for a business that is a tenant in a qualified wind energy facility. in order to comply with the Act. New language adds “except that any business with the prorated annual minimum number of new full-time employees will be eligible for a prorated award” in order to comply with the Act.

N.J.A.C. 19:31-20.3(a)2iv, which states that a business shall lease a qualified wind energy facility is amended to allow the business to own the facility. In addition, the language on how long the business must lease or own the qualified facility is amended to delete “10 years” while adding “the commitment period.” The changes bring the sentence in line with the Act.

At N.J.A.C. 19:31-20.3(a)2v, the term “economic” is added in reference to the net positive economic benefit and “wind” in reference to the qualified wind energy facility for clarity. Similarly, at N.J.A.C. 19:31-20.3(c) the term “economic” as pertains to net positive benefit is added. Amendments also revise the time required for calculating net positive economic benefit by deleting “10 years” and adding “the commitment period,” reflecting the language of the Act. Language making clear that the award of tax credits is subject to the recoupment provisions included in the approval letter, has been added for clarity. In addition, new language has been added to state that “the letter of intent shall also include a certification from the chief executive officer, or equivalent officer for North American operations, of the business that all factual representations made by the business to the Authority since the submission of the application are true under the penalty of perjury” and that “the Authority may make the non-binding letter of intent public, unless the Authority determines that the interests of the State require confidentiality.” These changes conform the program to other incentive programs and emphasize the Authority’s policies that: i) any grantee certification is made upon penalty of perjury and ii) the letter of intent is subject to the Open Public Records Act.

At N.J.A.C. 19:31-20.3(f), the word “or” is added to clarify that a business shall be treated as owner of a qualified wind energy facility if it holds title to the facility or if it ground leases the land underlying the facility for at least 50 years.

N.J.A.C. 19:31-20.4 Restrictions – At both N.J.A.C. 19:31-20.4(a) and (b), the term “allowed” is deleted and the word “awarded” added for clarity in regard to both instances in which offshore wind economic development tax credits are not available, and to the prohibition on receiving both a tax credit and certain other incentives authorized by the “Municipal Rehabilitation and Economic Recovery Act,” P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.).

N.J.A.C. 19:31-20.5 Application submission requirements – N.J.A.C. 19:31-20.5(a)1xiv, which pertains to the allocation of certain revenue realized from the sale of the tax credits by a partnership, is deleted because it repeats N.J.A.C. 19:31-20.9(e). In addition at N.J.A.C. 19:31-20.5(a)2ix, which addresses required project information, an amendment replaces New Jersey “positions” with “employees” in relation to what must be counted, and adds language stating that the count is for “each of the years of the commitment period” of the award and adds “that would” occupy the qualified wind energy facility. These changes bring the provision into conformance with the Act.

N.J.A.C. 19:31-20.6 Application and servicing fees – The proposed amendments revise the subsection as follows. At N.J.A.C. 19:31-20.6(a) the terms “of \$5,000 with payment in the form of a check, payable to the “New Jersey Economic Development Authority,” would be deleted, as various means of payment other than by check are available, and the Authority is moving away from a single fee. New language establishes a fee for projects with a total of 150 to 299 new full-time employees listed in the application, in the amount of \$10,000, and a fee for projects with a total of 300 or more new full-time employees listed in the application, in the amount of \$15,000.

N.J.A.C. 19:31-20.6(b) deletes the terms “[i]n addition to the application fee in (a) above” as all other fees in the subsection are in addition to the application fee.

N.J.A.C. 19:31-20.6(c) deletes the existing fee of “0.5 percent of the tax credit, not to exceed \$500,000” which shall be paid at the time of execution of the non-binding letter of intent pursuant to N.J.A.C. 19:31-20.3(c), which is replaced with a new fee for projects with a total of 150 to 299 new full-time employees proposed for consideration by the Board, of \$150,000, and a new fee for projects with a total of 300 or more new full-time employees proposed for consideration by the Board, of \$300,000.

N.J.A.C. 19:31-20.6(d) deletes the amount of the existing fee of 0.5 percent of the tax credit, not to exceed \$500,000 paid prior to the receipt of the tax credit certificate, and establishes a new fee for projects with a total of 150 to 299 new full-time employees approved by the Board, of \$150,000, and a new fee for projects with a total of 300 or more new full-time employees approved by the Board, of \$300,000;

N.J.A.C. 19:31-20.6(e) clarifies that the annual servicing fee shall be paid to the Authority for the duration of the “commitment” rather than the “eligibility” period and deletes the existing fee. New language creates a new fee for projects with a total of 150 to 299 new full-

time employees approved by the Board, of \$50,000 per year, and a new fee for projects with a total of 300 or more new full-time employees approved by the Board, of \$75,000 per year.

N.J.A.C. 19:31-20.6(f) corrects a citation in the subsection and deletes the amount of the existing fee for a tax credit transfer certification or permission to pledge a tax credit transfer certificate, which is “\$5,000 and \$2,500 for each additional request made annually.” Amendments add a new fee for each project with a total of 150 to 299 new full-time employees approved by the Board, of \$10,000 and \$5,000 for each additional request made annually, and a new fee for each project with a total of 300 or more new full-time employees approved by the Board, of \$15,000 and \$7,500 for each additional request made annually.

The existing language at N.J.A.C. 19:31-20.6(g) which concerns the fee that a business shall pay for certain administrative and major changes, additions, or modifications to the tax credit such as those requiring extensive staff time and Board approval is deleted in its entirety. New N.J.A.C. 19:31-20.6(g) creates a nonrefundable fee for “each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee” for “any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval” at two different levels. For “each project with a total of 150 to 299 new full-time employees approved by the Board,” the fee shall be \$5,000 for each request for any administrative changes, additions, or modifications and \$15,000 for any major changes, additions, or modifications, and for “each project with a total of 300 or more new full-time employees approved by the Board,” \$7,500 for each request for any administrative changes, additions, or modifications, and \$25,000 for any major changes, additions, or modifications.

Amendments at N.J.A.C. 19:31-20.6(h) delete the existing \$5,000 fee for each request for the first six-month extension to the date by which the business shall submit the certifications with respect to the capital investment and the employment requirements and the existing \$10,000 fee for any subsequent six-month extension. Added language establishes new fees for each project with a total of 150 to 299 new full-time employees approved by the Board, of \$10,000 for the first six-month extension and \$15,000 for each subsequent six-month extension, and for each project with a total of 300 or more new full-time employees approved by the Board, \$15,000 for the first six-month extension and \$25,000 for each subsequent six-month extension.

Additional amendments, under N.J.A.C. 19:31-20.6(i), establish a new non-refundable fee for certain terminations, i.e., for each project with a total of 150 to 299 new full-time employees approved by the Board, the fee for terminations that do not require extensive staff time and Board approval shall be \$5,000 and \$15,000 for terminations that require extensive staff time and Board approval, and for each project with 300 or more new full-time employees approved by the Board, the fee for terminations that do not require extensive staff time and Board approval shall be \$7,500 and \$25,000 for terminations that require extensive staff time and Board approval.

N.J.A.C. 19:31-20.7 Review of allocation and certification of project completion – N.J.A.C. 19:31-20.7(a) revises the date by which a business seeking an approval of tax credits must apply for tax credits from July 1, 2024 (which is deleted) to July 1, 2025 (which is added). Further, this subsection revises the date by which a business shall submit its documentation for

approval of its tax credit amount from July 1, 2027 (which is deleted) to July 1, 2028 (which is added).

N.J.A.C. 19:31-20.7(c) inserts the term “positive” pertaining to the net economic benefits test for clarity, and adds language stating that the Authority’s consideration as to whether the company meets the test shall include “direct benefits to the State.” Amendments also delete the terms “and State” pertaining to taxes “that may benefit the State”, and deletes the provision as “paid directly by the business, property taxes, or payment in lieu of taxes paid directly by the business, and taxes paid directly by new employees.” Additionally, the term “may” is deleted and replaced with “shall” pertaining to the Authority’s consideration as to whether the company meets the net positive economic benefits test. New language is added to make clear that the Authority shall consider indirect benefits in evaluating the project. Related amendments delete the language stating the Authority “at its discretion, (may evaluate) local and State taxes generated indirectly by the business, property taxes or payment in lieu of taxes generated indirectly by the business, taxes generated indirectly by new employees, or peripheral economic growth.” Further the phrase “wind energy zone” is deleted, and “New Jersey” added to reflect the changes to prior law in the Act. New language states that “the Authority will not consider indirect benefits if a business is including new full-time employees resulting from an equipment supply coordination agreement in the calculation of its new full time employees”, regarding the relocation of the business because such employees are traditionally considered part of the indirect benefit and the Authority seeks to avoid double counting the indirect benefit. An additional amendment deletes the provision that the Authority may increase the net economic benefit, at its discretion, if the business demonstrates to the Authority's satisfaction commitment(s) to contribute to non-financial community objectives. New language provides that the Authority may also consider “induced benefits derived from construction,” reflecting Authority policy that recognizes the immediate peripheral benefits created during construction. The provision that the determination “shall be limited to the net economic benefits derived from the capital investment commenced after the submission of an application to the Authority” is deleted.

N.J.A.C. 19:20.7(d) is modified to provide more specificity as to when prevailing wage and affirmative action apply to the project. Prevailing wage applies to all eligible capital investment, as all such capital investment is now included when determining whether the project yields a net positive economic benefit. Affirmative action applies to projects commencing with the effectivity of these rule amendments.

N.J.A.C. 19:31-20.7(d)2 deletes the term “notice” which is replaced with “letter” pertaining to the form for notice of approval to the business, reflecting current practice at the Authority. N.J.A.C. 19:31-20.7(e) revises the period in which each business shall submit certain progress information from six to twelve months and adds “except that projects consisting of new construction shall have twenty-four months” in order to reflect the time required to achieve the stated milestones. N.J.A.C. 19:31-20.7(f) clarifies that the certification of the capital investment and employment shall be from a “qualified independent” certified public accountant which reflects the Authority’s decision to qualify certain public accountants, as further explained in N.J.A.C. 19:31-20.7(f)(4). In addition, new language makes clear that the Authority may require other certifications concerning completion of all project “eligibility requirements” if, as it

administers the program, the Authority determines that certain information requires additional certifications.

N.J.A.C. 19:31-20.7(f)1 deletes the terms “tax credits” and “incentive grant,” which are replaced with the addition of “capital investment”, “application”, and “award” respectively, reflecting the Act and current Authority practice.

N.J.A.C. 19:31-20.7(f)2 clarifies that the certification with respect to employment shall also apply to employees employed through an equipment supply coordination agreement in addition to those employed at the qualified wind energy facility. The term “new full-time positions” is deleted. The word “jobs” in reference to the number of new full-time jobs, is deleted, replaced with the addition of the word “employees”, bringing it into conformance with usage in the Act. The terms “incentive grant” and “grant” are deleted, replaced with the addition of “application” and “award” respectively. Similarly, the phrase “minimum eligibility requirement” has been deleted, and the phrase “number of new full-time employees for the first year of the award” added, in the sentence pertaining to the certification of employment and the loss of tax credit eligibility for failure to meet the terms of the award, to make it clear that this sentence applies to both applications for 300 new full-time employees, which the Act defines as the “minimum” number of new, full-time employees and applications with less than 300 new full-time employees and at least 150 new full-time employees.

Proposed new N.J.A.C. 19:31-20.7(f)4 provides that the Authority shall qualify certified public accountants and provide to the business the list of qualified certified public accountants from which the business may select which is consistent with Authority policy and other incentive programs. Recodified N.J.A.C. 19:31-20.7(f)5 revises the date by which the employment certification shall be submitted from July 1, 2027 to July 1, 2028, in conformance with the Act. N.J.A.C. 19:31-20.7(g) adds “and any other eligibility requirements” to the conditions listed for certification upon completion of the capital investment and employment requirements to be consistent with N.J.A.C. 19:31-20.7 (f) (4) and deletes and replaces “other” with “all” pertaining to the necessary requirements for the program for clarity.

N.J.A.C. 19:31-20.9 Tax credit amount; application and allocation of the tax credit – N.J.A.C. 19:31-20.9(a) is proposed for numerous amendments, all of which update the provisions to bring them into conformance with the Act. Specifically, the term “allowed” is deleted and replaced with “awarded” pertaining to the amount of the credit pursuant to the Program. Additionally, the subchapter is revised to apply to projects creating 300 or more new, full-time employees during the eligibility period, clarify that the amount of the credit shall be equal to the capital investment “previously approved by the Board,” and delete the term “one-tenth,” replacing it with “one-fifth” as pertains to the rate of the total amount of the business’ credit for each tax accounting or privilege period of the business. Other amendments add “and any other eligibility requirements” to those first approved by the Authority, and provide that the amount of the credit allowed pursuant to the Program for projects creating less than 300 new, full-time employees and at least 150 new full-time employees shall, except as otherwise provided, be equal to certain percentages of the capital investment corresponding to the prorated minimum number of new full-time employees as proposed by the business. For example, a project proposing a \$100 million in capital investment and creating 300 or more new, full-time employees would qualify for a total tax-credit award of \$100 million. Conversely, a project

making the same \$100 million capital investment but creating only 150 new, full-time employees would qualify for a total tax-credit award of \$50 million. Furthermore, this same capital investment but where the project was subsequently creating either 200 or 250 new, full-time employees would result in total tax-credit awards of \$65 million and \$85 million respectively.

N.J.A.C. 19:20.9(b)1 deletes the term “business” replacing it with the addition of the term “wind energy,” clarifying that the provision relates to the qualified wind energy facility. Similarly, N.J.A.C. 19:20.9(c) inserts the term “qualified” in the reference to the wind energy facility and deletes and replaces the term “business” with “qualified wind energy” in the reference to the qualified wind energy facility. N.J.A.C. 19:20.9(d) deletes and replaces the term “allowed” with “awarded” as pertains to the amount of credit for a tax period to certain business that is a tenant in a qualified business facility; and, N.J.A.C. 19:31-20.9(e) deletes and replaces the term “allowed” with “awarded” as pertains to certain restriction on a business that is a partnership from receiving a credit under the Program. These changes bring the rule language into conformance with current usage and the Act.

N.J.A.C. 19:31-20.10 Application for tax credit transfer certificate – The proposed amendments, at N.J.A.C. 19:20.10(a), delete the term “allowed”, and the term “awarded” added in the provision that pertains to application for a tax credit transfer certificate and the sale or assignment of any amount of a tax credit transfer certificate as provided for in each subsection, for the same reasons as in the other places the terms have been replaced. At N.J.A.C. 19:20.10(f), language is added indicating that the Authority will make publicly available information relating to the sale of tax credits including the seller and the buyer and any consideration provided to the seller.

N.J.A.C. 19:31-20.12 Reduction and forfeiture of tax credits – N.J.A.C. 19:31-20.12(a) revises the subsection to provide that the provisions apply in any tax period “during the commitment period.” N.J.A.C. 19:31-20.12(b) makes the same amendment. In addition, amendments to the subsection delete “300,” adding in its place “with “the minimum number of new full-time employees or prorated minimum number of new full time employees, as applicable” with the regard to forfeiture of credits for a tax period or periods. The same amendment is made to the provision pertaining to the aggregate number of new full-time employees at the qualified wind energy facility and resulting from an equipment supply coordination agreements that return the project to compliance with the applicable minimum number, which “has been reviewed and approved by the Authority for which tax period and each subsequent tax period the full amount of the annual credit shall be allowed. The changes update the language to comply with the Act. The terms “but shall not include any employees resulting from an equipment supply coordination agreement” is added to this section to make clear that a company with which the recipient has an equipment supply coordination agreement for purposes of meeting the minimum number of new full-time employees or prorated minimum number of new full time employees is not considered an affiliate.

N.J.A.C. 19:31-20.12(d) deletes the phrase “require repayment of,” and adds “recapture” and “or a portion of” to clarify that tax credits received by the business as a result of the business providing willfully false or misleading information or failing to submit relevant information in the application will be recaptured in whole or in part by the Authority.

N.J.A.C. 19:31-20.12(e) clarifies that the subsection applies to projects with a commitment pursuant to N.J.A.C. 19:31-20.3(c) to maintain the project at the qualified wind energy facility after the commitment period. It does so by deleting the term “eligibility” and adding “commitment” period instead. It also deletes the provision “that was included in the calculation of the net positive economic benefit pursuant to N.J.A.C. 19:31-20.3(c)” which is replaced with “based on a recoupment schedule in the approval letter.” The change is based on current Authority practice. Other new language makes clear that a business will have twelve months to restore the new full-time maintained jobs to 300 or the applicable prorated minimum number of new full-time employees before the Authority may recoup any amount of tax credits.

N.J.A.C. 19:31-20.13 Effect of sale or lease of qualified facilities – N.J.A.C. 19:31-20.13(a) and N.J.A.C. 19:31-20.13(a)2 have been revised to clarify that any disposition of property, including leasing, may lead to forfeiture of tax credits. Additionally, a provision has been added to N.J.A.C. 19:31-20.13(a)2 to add three exceptions from forfeiture arising from the lease or sublease of a whole or part of the qualified wind energy facility. These exceptions are: if the lease or sublease is to a tenant that is a party to an equipment supply coordination agreement; the total amount leased or subleased to other tenants is five percent or less of the qualified wind energy facility; or the lease or sublease is to a tenant that also uses the premises to support offshore wind.

N.J.A.C. 19:31-20.14 Annual review reporting requirements; letter of compliance – N.J.A.C. 19:31-20.14(a) deletes the requirement that the annual review report shall be furnished by a “certified by a certified public accountant.”

N.J.A.C. 19:31-20.14(a)1: 1. Adds language to make clear that a “certification may be made pursuant to an agreed upon procedures letter acceptable to the Authority, of a qualified independent certified public accountant, which shall be qualified by the Authority pursuant to N.J.A.C. 19:31-20.7(f)4.” It also deletes and replaces the terms “position employed” and “jobs” with “employees.” An additional amendment clarifies that the certification with respect to employment shall also apply to employees employed through an equipment supply coordination agreement in addition to those employed at the qualified wind energy facility. Other changes insert the term “agreement” pertaining to an equipment supply coordination agreement; delete the term “independent” as relates to the certification “pursuant to N.J.A.C. 19:31-20.7(f);” delete the term “grant,” replacing it with the term “award;” and delete and replace the terms “apply” with “take” and “one-tenth” with “one-fifth” as relates to the total tax credit amount for the business as approved by the Authority. In addition, amendments delete the provision that “in the event the number of new full-time jobs at the qualified wind energy facility or resulting from an equipment supply coordination or salaries of these jobs in the annual review report is reduced below 10 percent or more of the number of new full-time jobs or salaries in the annual review report of the prior year or the independent certification if the annual review report is the first, the Authority may reevaluate the net positive economic benefit and reduce the size of the grant accordingly”. At N.J.A.C. 19:31-20.14(a)2, the term “letter” pertaining to the approval referenced in the paragraph has been added, and at N.J.A.C. 19:31-20.14(c) the term “tax credit certificate” has been deleted, and the term “approval letter” added in its place.

N.J.A.C. 19:31-20.15 Appeals – N.J.A.C. 19:31-20.15(a) deletes the phrase “on applications” as relates to the Board’s action; and N.J.A.C. 19:31-20.15(b) inserts the term “effective” pertaining to the date of the Board’s action based on current Authority policy.

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

Social Impact

The proposed amendments and repeal, which expand the financial assistance available under the Offshore Wind Economic Development Tax Credit Program and thereby spur private capital investment and employment growth in major, land-based offshore wind industry projects, is anticipated to have a positive social impact. The types of facilities, namely manufacturing, that the tax credit would incentivize have the potential to reinvigorate their local economies, particularly areas that have experienced historic disinvestment since the decline of manufacturing in the state. Likewise, the high-quality, long-term jobs – which are mostly blue collar – would support economic mobility and security for each facility’s workers. Thus, the Authority anticipates the tax credit and the resulting job creation to have a positive social impact.

Economic Impact

Under the Offshore Wind Economic Development Tax Credit Program, the NJEDA is authorized to approve up to \$100 million, except as may be increased by the Authority, in tax credits for the development of certain qualified wind energy facilities; therefore, the proposed amendments and repeal are intended to have a positive economic impact in New Jersey. The program is carefully targeted to attract major projects that will spur job creation in the short-term, and yield a net positive economic benefit to the State, while paving the way for long-term economic growth by anchoring a broad offshore wind manufacturing supply chain in New Jersey, as well as supporting the use of clean, sustainable energy. Due to the capital investment and job creation requirements, the tax credit will likely incentivize manufacturing facilities including offshore wind nacelles, blades, foundations, towers, and transition pieces manufacturing. The proposed rules require that only projects that will provide the State a positive long-term economic benefit can participate in the program. This means that while taxpayers may provide short-term tax credits to attract a project to the State, that project is committed to operating in the state long enough to pay back two to four times the value of those credits via State payroll, sales, and other taxes. Additionally, the fact that jobs must be created and capital improvements completed before tax credits are provided to approved businesses, along with robust recapture and repayment provisions if the businesses fail to meet their long-term obligations, ensure substantial economic protections with the program.

Federal Standards Statement

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

Jobs Impact

The proposed amendments and repeal will result in stimulating the creation of a significant amount of new private sector jobs and/or maintaining private sector jobs in New Jersey. The tax credit's emphasis on jobs, with the ultimate goal of at least 150 jobs for a qualifying facility, is critical to attracting companies that not only make large capital investments, but will also create high-quality, long-term jobs. These jobs, mostly manufacturing and assembly, tend to not require college degrees with much of the training being learned on the job or through apprenticeships such as machining and welding; thus, these high-quality jobs are more accessible and promote economic mobility. Offshore wind facilities that employ at least 150 workers tend to be key suppliers of offshore wind nacelles, blades, foundations, and substation manufacturing. Supply chain partners often follow these investments and locate their facilities nearby to capitalize on cost efficiencies. Hence, it is likely that the job benefits of this tax credit could extend beyond the applicant and its facility to lower-tier facilities that may not need or qualify for the tax credit to locate in New Jersey.

Agriculture Industry Impact

The proposed amendments and repeal will have no impact on the agriculture industry in New Jersey.

Regulatory Flexibility Statement

The proposed amendments and repeal will impose reporting, recordkeeping, or other compliance requirements on small business, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. should the business look to apply for the revised tax credits, however, any costs will be minimal and fully offset by the amount of financial assistance received. In addition, these amendments to the rules provide new features that allow approved applicants to use third-party, independent certified public accounting firms qualified by the Authority to support the tax credit certification process. This change is meant to improve regulatory compliance processes for all businesses and the Authority. The rules also provide exceptions to the use of Authority-qualified independent certified public accounting firms if the business demonstrates certain extenuating circumstances including, but not limited to, the unavailability of any of the qualified certified public accountants to timely complete the certification or none of the qualified certified public accountants are independent to the business, or the business is a small business.

Housing Affordability Impact Analysis

The proposed amendments and repeal will not impact affordable housing in New Jersey or evoke a change in the average costs associated with housing units, including multi-family rental housing and for sale housing in the State.

Smart Growth Development Impact Analysis

The proposed amendments and repeal will not impact smart growth or evoke a change in the number of housing units or result in any increase or decrease in the average cost of housing or in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The proposed amendments and repeal will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State.

Full text of the rule proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 19:31-20.8.

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

SUBCHAPTER 20. OFFSHORE WIND ECONOMIC DEVELOPMENT TAX CREDIT PROGRAM

19:31-20.1 Applicability and scope

This subchapter is promulgated by the New Jersey Economic Development Authority (the Authority) to implement section 6 of the Offshore Wind Economic Development Act, P.L. 2010, c. 57, as amended (the Act), which authorizes the Authority to approve up to \$100 million, except as may be increased by the Authority, in tax credits for the development of qualified wind energy facilities in [wind energy zones] **the State**.

19:31-20.2 Definitions

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

...

“Approval letter” means the letter sent by the Authority that sets forth the conditions to maintain the approval and to receive the tax credit, the forecasted schedule for completion and occupancy of the project, the date the [10-year] eligibility period is scheduled to commence, the estimated amount of tax credits, **the process by which affiliates contributing employment or capital investment may be added, the requirement for the project site to remain a qualified wind energy facility, events that would trigger reduction and forfeiture of tax credits, tax clearance certificate requirements,** and other such information that furthers the purposes of the Program. **The letter also requires the applicant to permit audit(s) from time to time, as the Authority deems necessary, of the business’s payroll records and any other evidence and documentation supporting the certifications pursuant to N.J.A.C. 19:31-20.7(f) and the annual reports pursuant to N.J.A.C. 19:31-20.14.** The approval letter will require the applicant to submit progress information by a certain date in order to preserve the approval of the tax credits.

...

“Capital investment” in a qualified wind energy facility means expenses incurred for the site preparation and construction, repair, renovation, improvement, equipping, or furnishing of a building, structure, facility, or improvement to real property, including associated soft costs, **provided soft costs shall not exceed 20 percent of all capital investment.** Capital investment includes obtaining and installing furnishings and machinery, apparatus, or equipment for the operation of a business in a building, structure, facility, or improvement to real property, site-related utility and transportation infrastructure improvements, plantings, or other environmental components required to attain the level of silver rating or above in the LEED(R) building rating system, but only to the extent that such capital investments have not received any grant financial assistance from any other State funding source including N.J.S.A. 52:27H-80 et seq. (The United States Green Building Council has developed the Leadership in Energy & Environmental Design (LEED) Green Building Rating System for measuring the energy efficiency and environmental sustainability of buildings. The LEED Rating System is a third-party certification program and the nationally accepted benchmark for the design, construction, and operation of high performance buildings.) Vehicles and heavy equipment not permanently located in the building, structure, facility, or improvement shall not constitute a capital investment. Also included is remediation of the qualified wind energy facility site, but only to the extent that such remediation has not received financial assistance from any other Federal, State, or local funding source. To be included, the capital investment must be commenced after August 19, 2010, the effective date of the Act. For purposes of this subchapter, “commenced” shall mean that the project consisting of construction of a new building shall not have progressed beyond site preparation; the project consisting of acquisition of an existing building shall not have closed title; and the project consisting of renovation or reconstruction of an existing building shall not have commenced construction.

“Commitment period” means the four-year period beginning on the same date as the eligibility period.

...

“Eligibility period” means the [10-year] **five-year** period in which a business may claim an offshore wind economic development tax credit, beginning with the tax period in which the Authority accepts the certification of the business that it has met the capital investment and employment qualifications of the Program.

...

“Full-time employee” means a person employed by the business for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, as determined by the Authority, or a person who is employed by a professional employer organization pursuant to an employee leasing agreement between the business and the professional employer organization, in accordance with P.L. 2001, c. 260 (N.J.S.A. 34:8-67 et seq.) for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time employment, as determined by the Authority, and whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. A full-time employee is also a partner of a business who works for the partnership for at least 35 hours a week, or who renders any other standard of

service generally accepted by custom or practice as determined by the Authority as full-time employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof is subject to the payment of estimated taxes, as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. "Full-time employee" shall not include any person who works as an independent contractor or on a consulting basis for the business. "Full-time employee" shall not include an employee who is a resident of another state and whose income is not subject to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., unless that state has entered into a reciprocity agreement with the State of New Jersey[, provided that any employee whose work is provided pursuant to a collective bargaining agreement with a business in the wind energy zone may be included].

"Full-time employee at the qualified wind energy facility" means a full-time employee whose primary office is at the site and who spends at least 80 percent of his or her time [in New Jersey] **at the facility**, 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.

...

"Letter of compliance" means the letter issued annually by the Authority pursuant to N.J.A.C. 19:31-20.[14(d)]**14(e)** that must accompany the use of the tax credit certificate.

"Minimum number of new, full-time employees" means:

- 1. For the first year of the award, at least a cumulative 100 new, full-time employees compared to the number of full-time employees at the time of application;**
- 2. For the second year of the award, for a privilege period or taxable year following the first year of the award, at least a cumulative 150 new, full-time employees compared to the number of full-time employees at the time of application;**
- 3. For the third year of the award, for a privilege period or taxable year following the second year of the award, at least a cumulative 200 new full-time employees compared to the number of full-time employees at the time of application; and**
- 4. For the fourth year of the award, for a privilege period or taxable year following the third year of the award, at least a cumulative 300 new full-time employees compared to the number of full-time employees at the time of application.**

...

"Project" means the employment and the capital investment in a qualified wind energy facility that is at least the employment and capital investment required by the Program [within a designated wind energy zone].

"Prorated minimum number of new full-time employees" means the minimum number of new full-time employees pursuant to N.J.A.C. 19:31-20.9(a) for a business receiving a prorated award.

“Prorated annual minimum number of new full-time employees” means for projects approved with less than 300 new full-time employees:

- 1. For the first year of the award, at least a cumulative 100 new, full-time employees compared to the number of full-time employees at the time of application;**
- 2. For the second year of the award, for a privilege period or taxable year following the first year of the award, at least a cumulative 150 new, full-time employees compared to the number of full-time employees at the time of application;**
- 3. For the third year of the award, for a privilege period or taxable year following the second year of the award, the lesser of 200 and the applicable prorated minimum number of new full-time employees, compared to the number of full-time employees at the time of application; and**
- 4. For the fourth year of the award, for a privilege period or taxable year following the third year of the award, the applicable prorated minimum number of new full-time employees compared to the number of full-time employees at the time of application.**

“Qualified offshore wind project” means the same as the term is defined in section 3 of P.L. 1999, c. 23 (N.J.S.A. 48:3-51), which is a wind turbine electricity generation facility in the Atlantic Ocean and connected to the electric transmission system in this State, and includes the associated transmission-related interconnection facilities and equipment, and approved by the New Jersey Board of Public Utilities, or any successor entity, pursuant to section 3 of P.L. 2010, c. 57 (N.J.S.A. 48:3-87.1).

“Qualified wind energy facility” means any building, complex of buildings, or structural components of buildings, including water access infrastructure, and all machinery and equipment used in the manufacturing, assembly, development, or administration of component parts that is primarily used to support the development and operation of a qualified offshore wind project, or other wind energy project as determined by the Authority[, and that are located in a wind energy zone]. To the extent a qualified wind energy facility requires improvements to existing non-wind facilities, only the improvements shall be part of the qualified wind energy facility.

“Soft costs” means [all costs associated with financing, design, engineering, legal, real estate commissions, furniture, or office equipment with a useful life of less than five years, provided they do not exceed 20 percent of total capital investment] all costs associated with financing, design, engineering, legal, or real estate commissions, including but not limited to, architect fees, permit fees, loan origination and closing costs, construction management, and freight and shipping delivery but not including early lease termination costs, air fare, mileage, tolls, gas, meals, packing material, marketing, temporary signage, incentive consultant fees, Authority fees, loan interest payments, escrows, or other similar costs.

...

["Wind energy zone" means property located in the South Jersey Port District established pursuant to The South Jersey Port Corporation Act, P.L. 1968, c. 60 (N.J.S.A. 12:11A-1 et seq.).]

19:31-20.3 Eligibility criteria

(a) In order to be eligible [to be considered] for an offshore wind economic development tax credit for a qualified wind energy facility:

1. If the business is other than a tenant, the business shall:

i. Make or acquire capital investments in a qualified wind energy facility totaling not less than \$50,000,000. A business that acquires a qualified wind energy facility after August 19, 2010, the effective date of the Act, shall also be deemed to have acquired the capital investment made or acquired by the seller, subject to the disqualifications in N.J.A.C. 19:31-20.13. The capital investments of the owner shall include capital investments made by a tenant and may include any tenant allowance provided by the owner in the lease and any tenant improvements funded by a tenant(s), but only to the extent necessary to meet the owner's minimum capital investment of \$50,000,000 provided that the owner so [indicate] **indicates** in the owner's application or certification and further provided that such tenant allowance or tenant improvements meet the definition of capital investment;

ii. Employ, in the aggregate, with tenants at the qualified wind energy facility, [not fewer than 300] **the minimum number of** new, full-time employees at the qualified wind energy facility or through an equipment supply coordination agreement, **except that any business with the prorated annual minimum number of new full-time employees will be eligible for a prorated award;** and

iii. Demonstrate to the Authority that the State's financial support of the proposed capital investment will yield a net positive economic benefit in the amount required in (c) below; and

2. If the business is a tenant in a qualified wind energy facility:

i. The owner of the qualified wind energy facility shall make or acquire capital investments in the facility totaling not less than \$50,000,000 [, as calculated] in accordance with (a)1i above;

ii. The tenant shall occupy a leased area of the qualified wind energy facility that represents at least \$17,500,000 of the capital investment in the **qualified wind energy** facility, as calculated pursuant to (b) below;

iii. Employ, in the aggregate, with other tenants at the qualified wind energy facility, [at least 300] **the minimum number of** new, full-time employees at the qualified wind energy facility or through an equipment supply coordination agreement, **except that any business with the prorated annual minimum number of new full-time employees will be eligible for a prorated award;**

iv. The business shall lease the qualified wind energy facility for a term of not less than [10 years] **the commitment period;** and

v. Except for tenants of a qualified wind energy facility for which the owner has previously demonstrated a net positive **economic** benefit and received approval of the qualified **wind** energy facility or approval of tax credits, the business shall demonstrate to the Authority that the State's financial support of the proposed capital investment will yield a net positive economic benefit in the amount required in (c) below. For purposes of this evaluation, the tenant may include the benefit derived from the owner's capital investment.

(b) (No change.)

(c) The net positive **economic** benefit required in (a)1iii and (a)2v above shall equal at least 110 percent of the approved tax credit allocation amount, to the State for the period equal to 75 percent of the useful life of the investment, not to exceed [10 years] **the commitment period**, provided that the Authority may determine, at its discretion, that the net positive economic benefit may extend to 20 years based on the length of the business's commitment to maintain the project at the qualified wind energy facility **and that the award of tax credits is subject to the recoupment provisions included in the approval letter**. To support the determination of a net positive **economic** benefit, the business shall submit to the Authority, prior to approval, a non-binding letter of intent executed between the Chief Executive Officer of the Authority and the chief executive officer, or equivalent officer for North American operations, of the business stating that the tax credits will yield a net positive economic benefit in the amount required in this subsection, taking into account the criteria listed at N.J.A.C. 19:31-20.7(c). **The letter of intent shall also include a certification from the chief executive officer, or equivalent officer for North American operations, of the business that all factual representations made by the business to the Authority since the submission of the application are true under the penalty of perjury. The Authority may make the non-binding letter of intent public, unless the Authority determines that the interests of the State require confidentiality.**

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

(f) A business shall be treated as owner of a qualified wind energy facility if it holds title to the facility **or** if it ground leases the land underlying the facility for at least 50 years.

(g) (No change.)

19:31-20.4 Restrictions

(a) A business shall not be [allowed] **awarded** offshore wind economic development tax credits if:

1.-2. (No change.)

(b) A business that is [allowed] **awarded** a tax credit under the Program shall not be eligible for incentives authorized pursuant to the "Municipal Rehabilitation and Economic Recovery Act," P.L. 2002, c. 43 (N.J.S.A. 52:27BBB-1 et seq.).

(c)-(d) (No change.)

19:31-20.5 Application submission requirements

(a) Each application to the Authority made by a business that is an owner or tenant shall include the following information in an application format prescribed by the Authority:

1. Business information, including information on all affiliates contributing either full-time employees or capital investment or both to the project, shall include the following:

i.-xii. (No change.)

xiii. A list of all the development subsidies, as defined by P.L. 2007, c. 200, that the applicant is requesting or receiving, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received. Examples of development subsidies are tax benefits from programs authorized under P.L. 2004, c. 65, P.L. 1996, c. 26, and P.L. 2002, c. 43; **and**

[xiv. In the event that the business is a partnership and chooses to allocate the revenue realized from the sale of the tax credits other than as a proportion of the owners' distributive share of income or gain of the partnership, the business shall provide an agreement that sets forth the allocation among the owners. This agreement will be submitted to the Director of the Division of Taxation in the Department of the Treasury by such time and with such information as the Director may require; and]

[xv] **xiv.** Any other necessary and relevant information as determined by the Authority for a specific application.

2. Project information shall include the following:

i.-viii (No change.)

ix. The total number of anticipated new full-time [positions] **employees** that would be created in New Jersey, **for each of the years of the commitment period, and that would** occupy the qualified wind energy facility, and the total number of full-time employees that would occupy the qualified wind energy facility, and the distribution of such totals identified by business entity;

x.-xii. (No change.)

3.-4. (No change.)

(b)-(c) (No change.)

19:31-20.6 Application and servicing fees

(a) A business applying for benefits under the Program shall submit a one-time non-refundable application fee. [of \$5,000, with payment in the form of a check, payable to the “New Jersey Economic Development Authority.”] **The application fee shall be as follows:**

1. For projects with a total of 150 to 299 new full-time employees listed in the application, the fee to be charged at application shall be \$10,000; and

2. For projects with a total of 300 or more new employees listed in the application, the fee to be charged at application shall be \$15,000.

(b) [In addition to the application fee in (a) above, a] **A business shall pay to the Authority, the full amount of direct costs of an analysis by a third-party retained by the Authority, if the Authority deems such retention to be necessary.**

(c) A non-refundable fee [of 0.5 percent of the tax credit, not to exceed \$500,000,] shall be paid at the time of execution of the non-binding letter of intent pursuant to N.J.A.C. 19:31-20.3(c)[.], **as follows except that the fee shall be refunded if the Authority does not approve the tax credit:**

1. For projects with a total of 150 to 299 new full-time employees proposed for consideration by the Board, the fee shall be \$150,000; and

2. For projects with a total of 300 or more new employees proposed for consideration by the Board, the fee shall be \$300,000.

(d) A non-refundable fee [of 0.5 percent of the tax credit, not to exceed \$500,000,] shall be paid prior to the receipt of the tax credit certificate **as follows:**

1. For projects with a total of 150 to 299 new full-time employees approved by the Board, the fee shall be \$150,000; and

2. For projects with a total of 300 or more new full-time employees approved by the Board, the fee shall be \$300,000.

(e) A business shall pay to the Authority an annual servicing fee, beginning the tax accounting or privilege period in which the Authority accepts the certification that the business has met the capital investment and employment qualifications, and for the duration of the [eligibility] **commitment period and, if applicable, the duration of the commitment pursuant to N.J.A.C. 19:31-20.3(c) to maintain the project at the qualified wind energy facility after the commitment period.** The annual servicing fee shall be paid to the Authority by the business at the time the business submits its annual report, **as follows:** [. For each project with tax credits of \$1,000,000 or less annually, the annual servicing fee shall be two percent of the annual tax credit amount, not to exceed \$20,000 per year; and for each project with tax credits in excess of \$1,000,000 annually, the annual servicing fee shall be two percent of the annual tax credit amount, not to exceed \$75,000 per year.]

1. For projects with a total of 150 to 299 new full-time employees approved by the Board, the annual servicing fee shall be \$50,000 per year; and

2. For projects with a total of 300 or more new full-time employees approved by the Board, the annual servicing fee shall be \$75,000 per year.

(f) A business applying for a tax credit transfer certificate pursuant to N.J.A.C. [19:31-18.13] 19:31-20.10 or permission to pledge a tax credit transfer certificate purchase contract as collateral shall pay to the Authority a fee [of \$5,000 and \$2,500 for each additional request made annually.], **as follows:**

1. For each project with a total of 150 to 299 new full-time employees approved by the Board, the fee shall be \$10,000 and \$5,000 for each additional request made annually; and

2. For each project with a total of 300 or more new full-time employees approved by the Board, the fee shall be \$15,000 and \$7,500 for each additional request made annually.

(g) [For each project with total tax credits of \$5,000,000 or less, a non-refundable fee of \$ 5,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$7,500 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval. For each project with total tax credits in excess of \$5,000,000, a non-refundable fee of \$ 10,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$25,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval.] **A business shall pay to the Authority a non-refundable fee for each request for any administrative changes, additions, or modifications to the tax credit; and, a non-refundable fee shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval, as follows:**

1. For each project with a total of 150 to 299 new full-time employees approved by the Board, a non-refundable fee of \$5,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$15,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval; and

2. For each project with a total of 300 or more new full-time employees approved by the Board, a non-refundable fee of \$7,500 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$25,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval.

(h) A non-refundable fee [of \$5,000] shall be paid for each request for the first six-month extension to the date by which the business shall submit the certifications with respect to the capital investment and with respect to the employees required upon completion of the capital investment and employment requirement; and a nonrefundable fee [of \$10,000] shall be paid for any subsequent six-month extension[.], **as follows:**

1. For each project with a total of 150 to 299 new full-time employees approved by the Board, the fee shall be \$10,000 for the first six-month extension and \$15,000 for each subsequent six-month extension; and

2. For each project with a total of 300 or more new full-time employees approved by the Board, the fee shall be \$15,000 for the first six-month extension and \$25,000 for each subsequent six-month extension.

(i) A business seeking to terminate an existing incentive agreement in order to participate in an incentive agreement authorized pursuant to P.L. 2013, c. 161, shall pay to the Authority an additional fee for terminations that do not require extensive staff time and Board approval; and a non-refundable fee for terminations that require extensive staff time or Board approval, as follows:

1. For each project with a total of 150 to 299 new full-time employees approved by the Board, the fee for terminations that do not require extensive staff time and Board approval shall be \$5,000 and \$15,000 for terminations that require extensive staff time and Board approval; and

2. For each project with a total of 300 or more new full-time employees approved by the Board, the fee for terminations that do not require extensive staff time and Board approval shall be \$7,500 and \$25,000 for terminations that require extensive staff time and Board approval.

19:31-20.7 Review of allocation and certification of project completion

(a) A business seeking an approval of tax credits for a qualified wind energy facility must apply for tax credits by July 1, [2024] **2025**, and a business shall submit its documentation for approval of its credit amount by July 1, [2027] **2028**.

(b) (No change.)

(c) In determining whether the company meets the net **positive** economic benefits test, as certified pursuant to N.J.A.C. 19:31-20.5(a)2iv, the Authority's consideration shall include, but not be limited to, the **direct benefits to the State, including** local [and State] taxes **that may benefit the State** [paid directly by the business, property taxes, or payment in lieu of taxes paid directly by the business, and taxes paid directly by new employees]. The Authority [may] **shall** also consider **indirect benefits** [, at its discretion, local and State taxes generated indirectly by the business, property taxes or payment in lieu of taxes generated indirectly by the business, taxes generated indirectly by new employees, or peripheral economic growth] caused by the business's relocation to [the wind energy zone] **New Jersey, except, that the Authority will not consider indirect benefits if a business is including new full-time employees resulting from an equipment supply coordination agreement in the calculation of its new full-time employees.** [The Authority may increase the net economic benefit, at its discretion, if the business demonstrates to the Authority's satisfaction commitment(s) to contribute to non-financial community objectives.] The Authority may also consider taxes paid directly or

generated indirectly by retained employees, at the Authority's discretion based on evidence satisfactory to the Authority that the employees are at risk of being lost to another state or country or eliminated, **and induced benefits derived from construction, provided that such** [The] determination [shall be limited to the net economic benefits derived from the capital investment commenced after the submission of an application to the Authority and] shall not include any capital investment or employees for which an incentive has been previously provided or any capital investment by a local or State governmental entity.

(d) Upon completion of the review of an application pursuant to (b) and (c) above, and receipt of a recommendation from Authority staff on the application, the Board shall determine whether or not to approve the application and the maximum amount of tax credits to be granted. The Board shall promptly notify the applicant and the Director of the Division of Taxation of the determination. The Board's award of the credits will be subject to conditions that must be met in order to maintain the approval and to receive the tax credits. An approval letter setting forth the conditions and indemnification and insurance requirements will be sent to the applicant. Such conditions shall include, but not be limited to, the requirement [that the project complies with the Authority's prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1), and affirmative action requirements, P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4),] that the project does not violate any environmental law requirements[, and that the business agrees to extend the four-year statute of limitations for the collection and assessment of corporation business tax and insurance premiums tax to the eligibility period. **The approval letter shall contain the requirement that the project comply with the Authority's prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1), for all capital investment and with the Authority's affirmative action requirements, P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), commencing with _____{effective date of these rule amendments}.** The approval letter shall also set forth a condition requiring the business to maintain the project at the qualified wind energy facility after the eligibility period to the extent the net positive economic benefit is calculated based on a period of years after the eligibility period pursuant to N.J.A.C. 19:31-20.3(c).

1. (No change.)

2. In the approval [notice] **letter** to the business, the Authority shall set a date by which its approval will expire.

(e) Within [six] **twelve** months following the date of application approval by the Authority, each approved business shall submit progress information indicating that the business has site plan approval, financing for, and site control of, the qualified wind energy facility, **except that projects consisting of new construction shall have twenty-four months**. Commencing with the date six months following the date of application approval, and every six months thereafter until completion of the project, each approved business shall submit an update of the status of the project to the Authority. Unless the Authority determines in its sole discretion that extenuating circumstances exist for extensions, the Authority's approval of the tax credits shall expire if the Authority does not timely receive the progress information or status update.

(f) Upon completion of the capital investment and employment requirements of the Program, the business shall submit a certification of a **qualified independent** certified public accountant and any receipts or verifiable documentation requested by the Authority, which may be made

pursuant to an “agreed upon procedures” letter acceptable to the Authority evidencing that the business has satisfied the conditions relating to capital investment, [and] any employment requirements, **and other eligibility requirements.**

1. The certification with respect to the capital investment shall define the amount of the [tax credits] **capital investment** and shall not be increased regardless of additional capital investment in the qualified wind energy facility, provided; however, that in no event, will the amount of [tax credits] **capital investment** exceed the amount of [tax credits] **capital investment** previously approved by the Board. In the event the capital investment is reduced below the capital investment in the approval of the [incentive grant] **application**, the Authority may reevaluate the net positive economic benefit and reduce the size of the [grant] **award** accordingly. If the certification indicates that the capital investment is less than the minimum eligibility requirement, the business shall no longer be eligible for tax credits.

2. The certification with respect to employment shall include the number of full-time employees [and new full-time positions] employed at the qualified wind energy facility **or through an equipment supply coordination agreement**, a copy of all equipment supply coordination agreements through which the business is meeting employment requirements under the Program, and the salary of all new full-time employees. To include a new full-time employee employed through an equipment supply coordination agreement, the business shall submit a certification from the company that is the other party to the equipment supply coordination agreement stating that its employees may be included by the business to meet the requirements of the Program, the number of new full-time employees employed through equipment supply coordination agreement, the number of hours worked by such employees pursuant to the equipment supply coordination agreement, and the salary of such employees. In the event the number of new full-time [jobs] **employees** or salaries in the certification is reduced below the number of new full-time [jobs] **employees** in the approval of the [incentive grant] **application** or the salaries proposed in the application, the Authority may reevaluate the net positive economic benefit and reduce the size of the [grant] **award** accordingly. If the certification indicates that the employment is less than the [minimum eligibility requirement] **required number of new full-time employees for the first year of the award**, the business shall no longer be eligible for tax credits.

3. (No change.)

4. **The Authority shall qualify certified public accountants and provide to the business the list of qualified certified public accountants; provided, the business may select a certified public accountant that is independent to the business and not on the Authority’s list of qualified certified public accountants for purposes of the capital investment certification, or the business’s chief financial officer may certify for purposes of the employment certification, upon the Authority’s prior approval if the business demonstrates an extenuating circumstance prohibiting the business from retaining a qualified certified public accountant. Such circumstances include, but are not limited to, the unavailability of any of the qualified certified public accountants to timely complete the certification or none of the qualified certified public accountants are independent to the business.**

[4]5. The certification shall be submitted to the Authority no later than three years after the Authority's application approval, unless the Authority determines in its sole discretion that there are extenuating circumstances for extensions, but in no event later than July 1, [2027] **2028**.

[5]6. The Authority may seek additional information from the business and/or information from the Department of Labor and Workforce Development to support the certification.

(g) Once the Authority accepts the timely certification of the business that it has satisfied the capital investment, [and] employment, **and any other eligibility** requirements of the Program, and the Authority determines that [other] **all** necessary conditions have been met, the Authority shall notify the business and notify the Director of the Division of Taxation, and the business shall receive its tax credit certificate. The use of the tax credit certificate shall be subject to the receipt of an annual letter of compliance.

19:31-20.9 Tax credit amount; application and allocation of the tax credit

(a) The amount of the credit [allowed] **awarded** pursuant to the Program **for projects creating 300 or more new full-time employees during the eligibility period** shall, except as otherwise provided, be equal to the capital investment **previously approved by the Board and** made by the business, or the capital investment represented by the business' leased area, or area owned by the business as a condominium, except as may be limited by the net positive economic benefits test and shall be taken over the eligibility period, at the rate of [one-tenth] **one-fifth** of the total amount of the business' credit for each tax accounting or privilege period of the business, beginning with the tax period in which the business is first approved by the Authority as having met the investment capital, [and] employment [qualifications], **and any other eligibility requirements**, subject to any reduction or disqualification provided in P.L. 2018, c. 17 and this subchapter as determined by annual review by the Authority. **The amount of the credit allowed pursuant to the Program for projects creating less than 300 new full-time employees but at least 150 new full-time employees during the eligibility period shall be set as follows:**

1. 50 percent of the capital investment for projects creating 150 new full-time employees and less than 200 new, full-time employees. For projects receiving this prorated award, the prorated minimum number of new full-time employees shall be 150 new full-time employees.

2. 65 percent of the capital investment for projects creating 200 new full-time employees and less than 250 new full-time employees. For projects receiving this prorated award, the prorated minimum number of new full-time employees shall be 200 new full-time employees.

3. 85 percent of the capital investment for projects creating 250 new full-time employees and less than 300 new full-time employees. For projects receiving this prorated award, the prorated minimum number of new full-time employees shall be 250 new full-time employees.

(b) In no event shall the amount of tax credits exceed the amount of tax credits previously approved by Board as follows:

1. If the owner uses space in a qualified wind energy facility, in order to determine the amount of the owner's capital investment that will be attributed toward the amount of its tax credit, the Authority shall multiply the owner's capital investment by a fraction, the numerator of which is the net leaseable area of the qualified [business] **wind energy** facility not leased to tenants and the denominator of which is the total net leaseable area.

2. (No change.)

(c) The business may apply the credit against its corporation business tax or insurance premiums tax otherwise due pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or N.J.S.A. 17B:23-5. The credit awarded to the business using one or more affiliates to satisfy the employment and/or capital investment requirements of the Program shall be applied on the basis of the allocation(s) submitted pursuant to the application, or as subsequently adjusted pursuant to N.J.A.C. 19:31-20.14 provided, however, that any affiliate that receives an allocation must have contributed either capital investments to the **qualified** wind energy facility or employees at the [business] **qualified wind energy** facility during the tax period for which the tax credits are issued.

(d) The amount of credit [allowed] **awarded** for a tax period to a business that is a tenant in a qualified business facility shall not exceed the business's total lease payments for occupancy for the tax period.

(e) A business that is a partnership shall not be [allowed] **awarded** a credit under the Program directly, but the amount of credit of [an] **a corporate** owner of a business shall be determined by allocating to each **corporate** owner of the partnership that proportion of the credit of the business that is equal to the **corporate** owner of the partnership's share, whether or not distributed, of the total distributive income or gain of the partnership for its tax period ending within or at the end of the owner's tax period, or that proportion that is allocated by an agreement, if any, among **all** the owners of the partnership that has been provided to the Director of the Division of Taxation in the Department of the Treasury by the time and accompanied by the additional information as the Director may require **consistent with any rule, guidance, or other publication issued by the Division of Taxation**.

(f)-(g) (No change.)

19:31-20.10 Application for tax credit transfer certificate

(a) A business may apply to the Director of the Division of Taxation in the Department of the Treasury and the Chief Executive Officer of the Authority for a tax credit transfer certificate covering one or more years, in lieu of the business being allowed any amount of the credit against the tax liability of the business. Such application shall identify the specific tax credits to be sold. Once approved by the Authority and the Director of the Division of Taxation, a certificate shall be issued. The certificate, upon receipt thereof by the business from the Director

and the Authority, may be sold or assigned, in full or in part, in an amount not less than \$25,000 of tax credits to any other person that may have a tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or N.J.S.A. 17B:23-5. The certificate provided to the business shall include a statement waiving the business's right to claim that amount of the credit against the taxes that the business has elected to sell or assign. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability shall be subject to the same limitations and conditions that apply to the use of the credit by the business that originally applied for and was [allowed] **awarded the credit, including, but not limited to, any applicable statutes of limitations for claiming a refund or credit.**

(b) (No change.)

(c) In the event that the business is a partnership and chooses to allocate the revenue realized from the sale of the tax credits other than as a proportion of the **corporate** owners' distributive share of income or gain of the partnership, the selling agreement shall set forth the allocation among the **corporate** owners that has previously been submitted to the Director of the Division of Taxation in the Department of the Treasury pursuant to N.J.A.C. 19:31-20.5(a).

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

(f) The Authority shall publish on its Internet website the following information concerning each tax credit transfer certificate approved by the Authority and the Director pursuant to this section:

- 1. The name of the transferrer;**
- 2. The name of the transferee;**
- 3. The value of the tax credit transfer certificate;**
- 4. The State tax against which the transferee may apply the tax credit; and**
- 5. The consideration received by the transferrer.**

19:31-20.12 Reduction and forfeiture of tax credits

(a) If, in any tax period **during the commitment period**, the business reduces the total number of full-time employees in its Statewide workforce by more than 20 percent from the number of full-time employees in its Statewide workforce in the last tax accounting or privilege period prior to the credit amount approval under the Program, then the business shall forfeit its credit amount for that tax period and each subsequent tax period until the first tax period for which documentation demonstrating the restoration of the business's Statewide workforce to the threshold levels required by this section has been reviewed and approved by the Authority, for which tax period and each subsequent tax period the full amount of the credit shall be allowed. For purposes of this section, "business" shall include any affiliate that has contributed to the capital investment, received the tax credit or contributed to the required full-time employees at

the qualified wind energy facility **but shall not include any employees resulting from an equipment supply coordination agreement.** The number of full-time employees in a business's Statewide workforce shall not include a new full-time employee at the qualified wind energy facility.

(b) If, in any tax period **during the commitment period**, the aggregate number of new full-time employees at the qualified wind energy facility and resulting from an equipment supply coordination agreement drops below [300] **the minimum number of new, full-time employees or prorated annual minimum number of new full time employees, as applicable**, then the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period of which documentation demonstrating the restoration of the number of new full-time employees employed at the qualified wind energy facility and resulting from an equipment supply coordination agreement to [300] **the minimum number of new, full-time employees or prorated annual minimum number of new full-time employees, as applicable**, **has been reviewed and approved by the Authority**, for which tax period and each subsequent tax period the full amount of the annual credit shall be allowed.

(c) (No change.)

(d) In the event that any certification required from the business or the other party to any equipment supply coordination agreement, including, but not limited to, the certifications required pursuant to N.J.A.C. 19:31-20.14(a)2, is found to be willfully false or that the business submitted false or misleading information or failed to submit relevant information in the application or any other submission to the Authority or the Division of Taxation, the Authority may, at its sole discretion and in addition to any other remedies available, revoke and/or terminate any award of tax credits in their entirety and may [require repayment of] **recapture all or a portion of the tax credits received by the business.**

(e) **For projects with a commitment pursuant to N.J.A.C. 19:31-20.3(c) to maintain the project at the qualified wind energy facility after the commitment period, the [The] Authority may recoup all or a portion of the tax credits awarded if the business does not maintain the project at the qualified wind energy facility for the period of years after the [eligibility] commitment period [that was included in the calculation of the net positive economic benefit pursuant to N.J.A.C. 19:31-20.3(c)] based on a recoupment schedule in the approval letter. The business shall have twelve months to restore the new full-time jobs to 300 or the applicable prorated minimum number of new full-time employees before the Authority may recoup any amount of tax credits.**

(f) **Any recapture or recoupment pursuant to (d) or (e) above may include interest on the recapture amount, at a rate equal to the statutory rate for tax deficiencies, plus any statutory penalties, and all costs incurred by the Authority and the Division of Taxation in the Department of the Treasury in connection with the pursuit of the recapture, including, but not limited to, counsel fees, court costs, and other costs of collection. The Authority shall confer with the Division of Taxation to determine the recapture or recoupment amount.**

19:31-20.13 Effect of sale or lease of qualified facilities

(a) The tax credit amount shall be forfeited in the event of sale of the qualified wind energy facility or **lease or** sublease of the business's tenancy as follows:

1. (No change.)

2. If a tenant **leases or** subleases its tenancy in whole or in part during the eligibility period, the **lessee or** sublessee shall not acquire the credit of the **lessor or** sublessor, and the **lessor or** sublessor tenant shall forfeit all credits for the tax period of its **lease or** sublease and all subsequent tax periods, except that if the **lessor or** sublessor tenant retains sufficient capital investment and employment to remain eligible for the Program, the forfeiture shall affect only the credits attributable to the **leased or** subleased portion of the facility. For the purposes of calculating the total annual lease payments of the business, the lease payments of the **lessee or** sublessee shall be subtracted. **Notwithstanding the foregoing, a business may lease or sublease a portion of its qualified business facility to any other new tenant without forfeiting any of the business's credits but shall not include the new tenant's full-time employees and capital investment in the business's eligible full-time employees or capital investment if:**

i. The lease or sublease is to a party to any equipment supply coordination agreement;

ii. The aggregate amount leased or subleased to any other tenant comprises five percent or less of the qualified wind energy facility; or

iii. The business leases or subleases to a tenant that primarily uses the leased or subleased premises to support the development and operation of a qualified offshore wind project.

19:31-20.14 Annual review reporting requirements; letter of compliance

(a) After notification pursuant to N.J.A.C. 19:31-20.7(g), the business shall furnish to the Authority an annual review report [certified by a certified public accountant] in a format as may be determined by the Authority, which shall contain the following information:

1. A certification, which shall be made pursuant to an agreed upon procedures letter acceptable to the Authority, of a qualified independent certified public accountant, which shall be qualified by the Authority pursuant to N.J.A.C. 19:31-20.7(f)4. The certification shall state the number of full-time employees and new full-time [positions] employees employed at the qualified wind energy facility or through an equipment supply coordination agreement, a copy of all equipment supply coordination agreements through which the business is meeting employment requirements under the Program, the salary of all new full-time employees, the number in the business's Statewide employment, total lease payments, the list of affiliates that contributed to the full-time employees at the qualified wind energy facility, the number of full-time employees in New Jersey in the last tax period prior to the credit amount approval of any affiliate that contributed to the full-time employees and was not listed in the application, and information on any change or anticipated change in the identity of the entities comprising the business elected to claim all or a portion of the credit. To include a new full-time

employee employed through an equipment supply coordination agreement, the business shall submit a certification from the company that is the other party to the equipment supply coordination agreement stating that its employees may be included by the business to meet the requirements of the Program, the number of new full-time employees employed through equipment supply coordination agreement, the number of hours worked by such employees pursuant to the equipment supply coordination agreement, and the salary of such employees. In the event the number of new full-time [jobs] **employees** at the qualified wind energy facility or resulting from an equipment supply coordination **agreement** or salaries of these jobs in the annual review report is reduced below 10 percent or more of the number of new full-time [jobs] **employees** or salaries in the annual review report of the prior year or the [independent] certification **pursuant to N.J.A.C. 19:31-20.7(f)** if the annual review report is the first, the Authority may reevaluate the net positive economic benefit and reduce the size of the [grant] **award** accordingly. If, in a tax period subsequent to a reduction in the size of the grant the business increases the number of new full-time [jobs] **employees** at the qualified wind energy facility or resulting from an equipment supply coordination **agreement** or salaries of these jobs in the annual review report above 10 percent or more of the number of new full-time [jobs] **employees** or salaries in the annual review report of the prior year, the Authority may reevaluate the net positive economic benefit and increase the size of the [grant] **award** accordingly, but in no event shall the amount of tax credit that the business may [apply] **take** in a tax period be greater than [one-tenth] **one-fifth** of the total tax credit amount approved by the Authority. [In the event the number of new full-time jobs at the qualified wind energy facility or resulting from an equipment supply coordination or salaries of these jobs in the annual review report is reduced below 10 percent or more of the number of new full-time jobs or salaries in the annual review report of the prior year or the independent certification if the annual review report is the first, the Authority may reevaluate the net positive economic benefit and reduce the size of the grant accordingly.] This reduction shall not affect any forfeiture under N.J.A.C. 19:31-20.12.

2. A certification indicating whether or not the business is aware of any condition, event, or act that would cause the business not to be in compliance with the approval **letter**, P.L. 2007, c. 346 or this subchapter.

(b) (No change.)

(c) The [tax credit certificate] **approval letter** may provide for additional reporting requirements.

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

19:31-20.15 Appeals

(a) The Board's action [on applications] shall be effective 10 business days after the Governor's receipt of the minutes, provided neither an early approval nor veto has been issued.

(b) An applicant may appeal the Board's action by submitting in writing to the Authority, within 20 calendar days from the **effective** date of the Board's action, an explanation as to how the applicant has met the Program criteria. Such appeals are not contested cases subject to the

requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., or 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(c) (No change.)

NJ FILM AND DIGITAL MEDIA TAX CREDIT PROGRAM

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY – FILM TAX CREDIT PROGRAM**

As created under the Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56, the New Jersey Film and Digital Media Tax Credit Program provides a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content in New Jersey. Under the Film Tax Credit Program, applicants are eligible for a tax credit equal to 30% of qualified film production expenses, or 35% of qualified film production expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.

APPLICANT: Survivalist the Film Inc

PROD-00257852

APPLICANT BACKGROUND:

Survivalist the Film Inc is the production company responsible for “The Survivalist”. The story takes place a year and a half after the fall of civilization due to a virus outbreak and follows a former FBI agent living alone on his family's ranch who is forced to protect a young woman from a dangerous gang led by a zealot who believes he is going to use her to save the world.

The film content has been reviewed and recommended for approval under the Act by the New Jersey Motion Picture and Television Commission. The Commission has determined that the film shall include, at no cost to the State, marketing materials promoting the State, including the placement of a logo in the end credits of the film.

ELIGIBILITY AND TAX CREDIT CALCULATION:

As part of eligibility for tax credits under the New Jersey Film Tax Credit Program, a film must meet at least one of two expense eligibility thresholds:

1. Total Film Production Expenses: A minimum of 60% of the film’s total production expenses (calculated excluding post-production expenses) must be incurred after July 1, 2018 but before July 1, 2023 for services performed and goods purchased through vendors authorized to do business in New Jersey. The following film production expenses are projected by the applicant.

A. Total Film Production Expenses	\$2,524,185
B. Total Post-Production Expenses	\$80,460
C. Total expenses for services performed and goods purchased through vendors authorized to do business in New Jersey (excluding any post-production expenses)	\$2,105,361
Percentage Calculation = $C/(A-B)$	86.15%
Criterion Met	Yes

2. Qualified Film Production Expenses: During a single privilege period, the film must have more than \$1 million in qualified film production expenses. “Qualified film production expenses” are expenses incurred in New Jersey after July 1, 2018 for the production of a film, including pre-production costs and post-production costs. “Qualified film production expenses” shall include, but shall not limited to: wages and salaries of individuals employed in the production of a film on which the New Jersey Gross Income Tax has been paid or is due; and, the costs for tangible personal property used and services performed in New Jersey, directly and exclusively in the

production of the film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payments made to a loan out company or to an independent contractor shall not be a “qualified film production expenses” unless the payments are made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by N.J.A.C. 19:31-21.3(c). “Qualified film production expenses” shall not include: expenses incurred in marketing or advertising a film; and payment in excess of \$500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines. The following qualified film production expenses are projected by the applicant to be incurred in New Jersey:

Qualified Film Production Expenses incurred in NJ during a single privilege period after July 1, 2018.	\$2,105,361
Criterion Met	Yes

AWARD CALCULATION

Base Award Criteria	Calculation	Result
30% of Qualified Film Production Expenses	\$2,105,361 x 30% =	\$631,608.30
Bonus Criteria Met		
Submission of Diversity Plan deemed satisfactory by EDA and NJ Taxation. 2% of Qualified Film Production Expenses.	\$0 x 2% =	\$0
5% of Qualified Film Production Expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.	\$224,324 x 5% = (Mercer County, Site Fees and Rentals)	\$11,216.20
Total Award		\$642,824.50

APPLICATION RECEIVED DATE:	12/4/2020 (Application #47)
DATE APPLICATION DEEMED COMPLETE:	3/3/2021
PRINCIPAL PHOTOGRAPHY COMMENCEMENT:	12/8/2020
PRINCIPAL NJ PHOTOGRAPHY LOCATION:	Ringoes, NJ
ESTIMATED DATE OF PROJECT COMPLETION:	12/20/2020
APPLICANT'S FISCAL YEAR END:	12/31/2021
TAX CREDIT VINTAGE YEAR(S):	2021
TAX FILING TYPE:	Corporate Business Tax
ANTICIPATED CERTIFICATION DATE:	6/15/2021

In general, the final documentation shall be submitted to the Authority no later than four years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 and three years after the Authority's initial approval if the taxpayer is seeking a

credit against the tax imposed pursuant to the N.J.S.A. 54A:1-1 et seq.

The Garden State Film and Digital Media Jobs Act originally provided a total of \$75 million in tax credits for State Fiscal Year 2019 and increased to \$100 million as amended by law on 1/21/2020. The program amendment also allows \$50 million of unused allocation to carry over to the subsequent State Fiscal Year. As a result, \$150 million of film tax credits are available for State Fiscal Year 2021. After today's approvals, \$119.1 million remains in the program for State Fiscal Year 2021 which may be available to 14 additional applications in the pipeline totaling \$103.1 million.

APPROVAL REQUEST:

The Members of the Authority are asked to initially approve the proposed award to the applicant under the New Jersey Film and Digital Media Tax Credit Program. The recommended tax credit is contingent upon receipt by the Authority of evidence that the applicant has met certain criteria to substantiate the recommended award, and is subject to final approval by the Authority and the Division of Taxation. Staff may issue the Authority's final approval if the criteria met by the company is consistent with that shown herein. If the criteria met by the company differs from that shown herein, Staff may lower the tax credit amount to reflect what corresponds to the actual criteria that have been met.

APPROVAL OFFICER: S. Novak

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY – FILM TAX CREDIT PROGRAM**

As created under the Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56, the New Jersey Film and Digital Media Tax Credit Program provides a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content in New Jersey. Under the Film Tax Credit Program, applicants are eligible for a tax credit equal to 30% of qualified film production expenses, or 35% of qualified film production expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.

APPLICANT: Universal Television LLC

PROD-00188181

APPLICANT BACKGROUND:

Universal Television LLC is the production company responsible for “Lincoln”. The series follows former NYPD detective and forensic genius Lincoln Rhyme, played by Russell Hornsby, and his new partner, Amelia Sachs (Arielle Kebbel) in a cat-and-mouse game as they join forces to bring down a notorious serial killer.

The film content has been reviewed and recommended for approval under the Act by the New Jersey Motion Picture and Television Commission. The Commission has determined that the film shall include, at no cost to the State, marketing materials promoting the State, including the placement of a logo in the end credits of the film.

ELIGIBILITY AND TAX CREDIT CALCULATION:

As part of eligibility for tax credits under the New Jersey Film Tax Credit Program, a film must meet at least one of two expense eligibility thresholds:

1. Total Film Production Expenses: A minimum of 60% of the film’s total production expenses (calculated excluding post-production expenses) must be incurred after July 1, 2018 but before July 1, 2023 for services performed and goods purchased through vendors authorized to do business in New Jersey. The following film production expenses are projected by the applicant.

A. Total Film Production Expenses	\$48,788,576
B. Total Post-Production Expenses	\$1,923,939
C. Total expenses for services performed and goods purchased through vendors authorized to do business in New Jersey (excluding any post-production expenses)	\$40,316,501
Percentage Calculation = $C/(A-B)$	86.02%
Criterion Met	Yes

2. Qualified Film Production Expenses: During a single privilege period, the film must have more than \$1 million in qualified film production expenses. “Qualified film production expenses” are expenses incurred in New Jersey after July 1, 2018 for the production of a film, including pre-production costs and post-production costs. “Qualified film production expenses” shall include, but shall not limited to: wages and salaries of individuals employed in the production of a film on which the New Jersey Gross Income Tax has been paid or is due; and, the costs for tangible personal property used and services performed in New Jersey, directly and exclusively in the

production of the film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payments made to a loan out company or to an independent contractor shall not be a “qualified film production expenses” unless the payments are made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by N.J.A.C. 19:31-21.3(c). “Qualified film production expenses” shall not include: expenses incurred in marketing or advertising a film; and payment in excess of \$500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines. The following qualified film production expenses are projected by the applicant to be incurred in New Jersey:

Total Qualified Film Production Expenses incurred in NJ in two privilege periods, of which at least \$1 million is incurred in a single privilege period after July 1, 2018.	\$40,316,501
Criterion Met	Yes

AWARD CALCULATION

Base Award Criteria	Calculation	Result
30% of Qualified Film Production Expenses	\$40,316,501 x 30% =	\$12,094,950.30
Bonus Criteria Met		
Submission of Diversity Plan deemed satisfactory by EDA and NJ Taxation. 2% of Qualified Film Production Expenses.	\$40,316,501 x 2% =	\$806,330.02
5% of Qualified Film Production Expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.	\$200,000 x 5% = (Atlantic County, Staging equipment)	\$10,000.00
Total Award		\$12,911,280.32

APPLICATION RECEIVED DATE:	1/10/2020 (Application #37)
DATE APPLICATION DEEMED COMPLETE:	2/5/2021
PRINCIPAL PHOTOGRAPHY COMMENCEMENT:	9/16/2019
PRINCIPAL NJ PHOTOGRAPHY LOCATION:	East Rutherford Borough
ESTIMATED DATE OF PROJECT COMPLETION:	1/24/2020
APPLICANT’S FISCAL YEAR END:	12/31/2021
TAX CREDIT VINTAGE YEAR(S):	2021
TAX FILING TYPE:	Corporate Business Tax
ANTICIPATED CERTIFICATION DATE:	6/15/2021

In general, the final documentation shall be submitted to the Authority no later than four years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to

N.J.S.A. 54:10A-5 and three years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to the N.J.S.A. 54A:1-1 et seq.

The Garden State Film and Digital Media Jobs Act originally provided a total of \$75 million in tax credits for State Fiscal Year 2019 and increased to \$100 million as amended by law on 1/21/2020. The program amendment also allows \$50 million of unused allocation to carry over to the subsequent State Fiscal Year. As a result, \$150 million of film tax credits are available for State Fiscal Year 2021. After today's approvals, \$119.1 million remains in the program for State Fiscal Year 2021 which may be available to 14 additional applications in the pipeline totaling \$103.1 million.

APPROVAL REQUEST:

The Members of the Authority are asked to initially approve the proposed award to the applicant under the New Jersey Film and Digital Media Tax Credit Program. The recommended tax credit is contingent upon receipt by the Authority of evidence that the applicant has met certain criteria to substantiate the recommended award, and is subject to final approval by the Authority and the Division of Taxation. Staff may issue the Authority's final approval if the criteria met by the company is consistent with that shown herein. If the criteria met by the company differs from that shown herein, Staff may lower the tax credit amount to reflect what corresponds to the actual criteria that have been met.

APPROVAL OFFICER: S. Novak

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY – FILM TAX CREDIT PROGRAM**

As created under the Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56, the New Jersey Film and Digital Media Tax Credit Program provides a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content in New Jersey. Under the Film Tax Credit Program, applicants are eligible for a tax credit equal to 30% of qualified film production expenses, or 35% of qualified film production expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.

APPLICANT: Universal Content Productions LLC

PROD-00188274

APPLICANT BACKGROUND:

Universal Content Productions LLC is the production company responsible for “Masters of Doom Pilot”, the true story of two computer geniuses in an obscure corner of America who, along with a group of rebellious misfits, created one of the biggest franchise hits of the 90s, the video game Doom. John Carmack and John Romero were best friends who became bitter rivals, as they created a video game empire and transformed pop culture forever.

The film content has been reviewed and recommended for approval under the Act by the New Jersey Motion Picture and Television Commission. The Commission has determined that the film shall include, at no cost to the State, marketing materials promoting the State, including the placement of a logo in the end credits of the film.

ELIGIBILITY AND TAX CREDIT CALCULATION:

As part of eligibility for tax credits under the New Jersey Film Tax Credit Program, a film must meet at least one of two expense eligibility thresholds:

1. Total Film Production Expenses: A minimum of 60% of the film’s total production expenses (calculated excluding post-production expenses) must be incurred after July 1, 2018 but before July 1, 2023 for services performed and goods purchased through vendors authorized to do business in New Jersey. The following film production expenses are projected by the applicant.

A. Total Film Production Expenses	\$12,363,840
B. Total Post-Production Expenses	\$372,955
C. Total expenses for services performed and goods purchased through vendors authorized to do business in New Jersey (excluding any post-production expenses)	\$10,684,723
Percentage Calculation = $C/(A-B)$	89.10%
Criterion Met	Yes

2. Qualified Film Production Expenses: During a single privilege period, the film must have more than \$1 million in qualified film production expenses. “Qualified film production expenses” are expenses incurred in New Jersey after July 1, 2018 for the production of a film, including pre-production costs and post-production costs. “Qualified film production expenses” shall include, but shall not limited to: wages and salaries of individuals employed in the production of a film on which the New Jersey Gross Income Tax has been paid or is due; and, the costs for tangible

personal property used and services performed in New Jersey, directly and exclusively in the production of the film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payments made to a loan out company or to an independent contractor shall not be a “qualified film production expenses” unless the payments are made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by N.J.A.C. 19:31-21.3(c). “Qualified film production expenses” shall not include: expenses incurred in marketing or advertising a film; and payment in excess of \$500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines. The following qualified film production expenses are projected by the applicant to be incurred in New Jersey:

Qualified Film Production Expenses incurred in NJ during a single privilege period after July 1, 2018.	\$10,684,723
Criterion Met	Yes

AWARD CALCULATION

Base Award Criteria	Calculation	Result
30% of Qualified Film Production Expenses	\$10,684,723 x 30% =	\$3,205,416.90
Bonus Criteria Met		
Submission of Diversity Plan deemed satisfactory by EDA and NJ Taxation. 2% of Qualified Film Production Expenses.	\$0 x 2% =	\$0
5% of Qualified Film Production Expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.	\$0 x 5% =	\$0
Total Award		\$3,205,416.90

APPLICATION RECEIVED DATE:	2/19/2020 (Application #39)
DATE APPLICATION DEEMED COMPLETE:	3/22/2021
PRINCIPAL PHOTOGRAPHY COMMENCEMENT:	10/27/2019
PRINCIPAL NJ PHOTOGRAPHY LOCATION:	Kearny Town, NJ
ESTIMATED DATE OF PROJECT COMPLETION:	11/14/2019
APPLICANT’S FISCAL YEAR END:	12/31/2021
TAX CREDIT VINTAGE YEAR(S):	2021
TAX FILING TYPE:	Corporate Business Tax
ANTICIPATED CERTIFICATION DATE:	6/30/2021

In general, the final documentation shall be submitted to the Authority no later than four years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to

N.J.S.A. 54:10A-5 and three years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to the N.J.S.A. 54A:1-1 et seq.

The Garden State Film and Digital Media Jobs Act originally provided a total of \$75 million in tax credits for State Fiscal Year 2019 and increased to \$100 million as amended by law on 1/21/2020. The program amendment also allows \$50 million of unused allocation to carry over to the subsequent State Fiscal Year. As a result, \$150 million of film tax credits are available for State Fiscal Year 2021. After today's approvals, \$119.1 million remains in the program for State Fiscal Year 2021 which may be available to 14 additional applications in the pipeline totaling \$103.1 million.

APPROVAL REQUEST:

The Members of the Authority are asked to initially approve the proposed award to the applicant under the New Jersey Film and Digital Media Tax Credit Program. The recommended tax credit is contingent upon receipt by the Authority of evidence that the applicant has met certain criteria to substantiate the recommended award, and is subject to final approval by the Authority and the Division of Taxation. Staff may issue the Authority's final approval if the criteria met by the company is consistent with that shown herein. If the criteria met by the company differs from that shown herein, Staff may lower the tax credit amount to reflect what corresponds to the actual criteria that have been met.

APPROVAL OFFICER: S. Novak

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY – FILM TAX CREDIT PROGRAM**

As created under the Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56, the New Jersey Film and Digital Media Tax Credit Program provides a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content in New Jersey. Under the Film Tax Credit Program, applicants are eligible for a tax credit equal to 30% of qualified film production expenses, or 35% of qualified film production expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.

APPLICANT: Apple Slice Productions, LLC

PROD-00258281

APPLICANT BACKGROUND:

Apple Slice Productions, LLC is the production company responsible for “Jules”, the story of an elderly man in a small town whose life and the lives of two women in his community are completely upended after he receives an unexpected visitor. What follows is a moving, funny, quiet story about isolation and the value of human connections.

The film content has been reviewed and recommended for approval under the Act by the New Jersey Motion Picture and Television Commission. The Commission has determined that the film shall include, at no cost to the State, marketing materials promoting the State, including the placement of a logo in the end credits of the film.

ELIGIBILITY AND TAX CREDIT CALCULATION:

As part of eligibility for tax credits under the New Jersey Film Tax Credit Program, a film must meet at least one of two expense eligibility thresholds:

1. Total Film Production Expenses: A minimum of 60% of the film’s total production expenses (calculated excluding post-production expenses) must be incurred after July 1, 2018 but before July 1, 2023 for services performed and goods purchased through vendors authorized to do business in New Jersey. The following film production expenses are projected by the applicant.

A. Total Film Production Expenses	\$14,503,514
B. Total Post-Production Expenses	\$1,220,602
C. Total expenses for services performed and goods purchased through vendors authorized to do business in New Jersey (excluding any post-production expenses)	\$12,473,685
Percentage Calculation = $C/(A-B)$	93.91%
Criterion Met	Yes

2. Qualified Film Production Expenses: During a single privilege period, the film must have more than \$1 million in qualified film production expenses. “Qualified film production expenses” are expenses incurred in New Jersey after July 1, 2018 for the production of a film, including pre-production costs and post-production costs. “Qualified film production expenses” shall include, but shall not limited to: wages and salaries of individuals employed in the production of a film on which the New Jersey Gross Income Tax has been paid or is due; and, the costs for tangible personal property used and services performed in New Jersey, directly and exclusively in the

production of the film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payments made to a loan out company or to an independent contractor shall not be a “qualified film production expenses” unless the payments are made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by N.J.A.C. 19:31-21.3(c). “Qualified film production expenses” shall not include: expenses incurred in marketing or advertising a film; and payment in excess of \$500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines. The following qualified film production expenses are projected by the applicant to be incurred in New Jersey:

Qualified Film Production Expenses incurred in NJ during a single privilege period after July 1, 2018.	\$12,474,685
Criterion Met	Yes

AWARD CALCULATION

Base Award Criteria	Calculation	Result
30% of Qualified Film Production Expenses	\$12,474,685 x 30% =	\$3,742,405.50
Bonus Criteria Met		
Submission of Diversity Plan deemed satisfactory by EDA and NJ Taxation. 2% of Qualified Film Production Expenses.	\$0 x 2% =	\$0
5% of Qualified Film Production Expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.	\$0x 5% =	\$0
Total Award		\$3,742,405.50

APPLICATION RECEIVED DATE:	3/23/2021 (Application #53)
DATE APPLICATION DEEMED COMPLETE:	5/11/2021
PRINCIPAL PHOTOGRAPHY COMMENCEMENT:	8/30/2021
PRINCIPAL NJ PHOTOGRAPHY LOCATION:	Montclair, NJ
ESTIMATED DATE OF PROJECT COMPLETION:	10/15/2021
APPLICANT’S FISCAL YEAR END:	12/31/2021
TAX CREDIT VINTAGE YEAR(S):	2021
TAX FILING TYPE:	Corporate Business Tax
ANTICIPATED CERTIFICATION DATE:	11/30/2021

In general, the final documentation shall be submitted to the Authority no later than four years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 and three years after the Authority's initial approval if the taxpayer is seeking a

credit against the tax imposed pursuant to the N.J.S.A. 54A:1-1 et seq.

The Garden State Film and Digital Media Jobs Act originally provided a total of \$75 million in tax credits for State Fiscal Year 2019 and increased to \$100 million as amended by law on 1/21/2020. The program amendment also allows \$50 million of unused allocation to carry over to the subsequent State Fiscal Year. As a result, \$150 million of film tax credits are available for State Fiscal Year 2021. After today's approvals, \$119.1 million remains in the program for State Fiscal Year 2021 which may be available to 14 additional applications in the pipeline totaling \$103.1 million.

APPROVAL REQUEST:

The Members of the Authority are asked to initially approve the proposed award to the applicant under the New Jersey Film and Digital Media Tax Credit Program. The recommended tax credit is contingent upon receipt by the Authority of evidence that the applicant has met certain criteria to substantiate the recommended award, and is subject to final approval by the Authority and the Division of Taxation. Staff may issue the Authority's final approval if the criteria met by the company is consistent with that shown herein. If the criteria met by the company differs from that shown herein, Staff may lower the tax credit amount to reflect what corresponds to the actual criteria that have been met.

APPROVAL OFFICER: S. Novak

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY – FILM TAX CREDIT PROGRAM**

As created under the Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56, the New Jersey Film and Digital Media Tax Credit Program provides a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content in New Jersey. Under the Film Tax Credit Program, applicants are eligible for a tax credit equal to 30% of qualified film production expenses, or 35% of qualified film production expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.

APPLICANT: Redo Askew, LLC

PROD-00258300

APPLICANT BACKGROUND:

Redo Askew, LLC is the production company responsible for “Clerks3”, the story of a lifelong slacker and master of malcontent who suffers a massive heart attack and then decides to make a movie about his life at his beloved convenience store.

The film content has been reviewed and recommended for approval under the Act by the New Jersey Motion Picture and Television Commission. The Commission has determined that the film shall include, at no cost to the State, marketing materials promoting the State, including the placement of a logo in the end credits of the film.

ELIGIBILITY AND TAX CREDIT CALCULATION:

As part of eligibility for tax credits under the New Jersey Film Tax Credit Program, a film must meet at least one of two expense eligibility thresholds:

1. Total Film Production Expenses: A minimum of 60% of the film’s total production expenses (calculated excluding post-production expenses) must be incurred after July 1, 2018 but before July 1, 2023 for services performed and goods purchased through vendors authorized to do business in New Jersey. The following film production expenses are projected by the applicant.

A. Total Film Production Expenses	\$8,530,404
B. Total Post-Production Expenses	\$599,212
C. Total expenses for services performed and goods purchased through vendors authorized to do business in New Jersey (excluding any post-production expenses)	\$7,809,519
Percentage Calculation = C/(A-B)	98.46%
Criterion Met	Yes

2. Qualified Film Production Expenses: During a single privilege period, the film must have more than \$1 million in qualified film production expenses. “Qualified film production expenses” are expenses incurred in New Jersey after July 1, 2018 for the production of a film, including pre-production costs and post-production costs. “Qualified film production expenses” shall include, but shall not limited to: wages and salaries of individuals employed in the production of a film on which the New Jersey Gross Income Tax has been paid or is due; and, the costs for tangible personal property used and services performed in New Jersey, directly and exclusively in the production of the film, such as expenditures for film production facilities, props, makeup,

wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payments made to a loan out company or to an independent contractor shall not be a “qualified film production expenses” unless the payments are made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by N.J.A.C. 19:31-21.3(c). “Qualified film production expenses” shall not include: expenses incurred in marketing or advertising a film; and payment in excess of \$500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines. The following qualified film production expenses are projected by the applicant to be incurred in New Jersey:

Qualified Film Production Expenses incurred in NJ during a single privilege period after July 1, 2018.	\$7,914,966
Criterion Met	Yes

AWARD CALCULATION

Base Award Criteria	Calculation	Result
30% of Qualified Film Production Expenses	$\$7,914,966 \times 30\% =$	\$2,374,489.80
Bonus Criteria Met		
Submission of Diversity Plan deemed satisfactory by EDA and NJ Taxation. 2% of Qualified Film Production Expenses.	$\$7,914,966 \times 2\% =$	\$158,299.32
5% of Qualified Film Production Expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.	$\$0 \times 5\% =$	\$0
Total Award		\$2,532,789.12

APPLICATION RECEIVED DATE:	3/31/2021 (Application #50)
DATE APPLICATION DEEMED COMPLETE:	4/13/2021
PRINCIPAL PHOTOGRAPHY COMMENCEMENT:	5/31/2021
PRINCIPAL NJ PHOTOGRAPHY LOCATION:	Leonardo, NJ
ESTIMATED DATE OF PROJECT COMPLETION:	12/30/2021
APPLICANT'S FISCAL YEAR END:	12/31/2021
TAX CREDIT VINTAGE YEAR(S):	2021
TAX FILING TYPE:	Corporate Business Tax
ANTICIPATED CERTIFICATION DATE:	12/31/2021

In general, the final documentation shall be submitted to the Authority no later than four years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 and three years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to the N.J.S.A. 54A:1-1 et seq.

The Garden State Film and Digital Media Jobs Act originally provided a total of \$75 million in tax credits for State Fiscal Year 2019 and increased to \$100 million as amended by law on 1/21/2020. The program amendment also allows \$50 million of unused allocation to carry over to the subsequent State Fiscal Year. As a result, \$150 million of film tax credits are available for State Fiscal Year 2021. After today's approvals, \$119.1 million remains in the program for State Fiscal Year 2021 which may be available to 14 additional applications in the pipeline totaling \$103.1 million.

APPROVAL REQUEST:

The Members of the Authority are asked to initially approve the proposed award to the applicant under the New Jersey Film and Digital Media Tax Credit Program. The recommended tax credit is contingent upon receipt by the Authority of evidence that the applicant has met certain criteria to substantiate the recommended award, and is subject to final approval by the Authority and the Division of Taxation. Staff may issue the Authority's final approval if the criteria met by the company is consistent with that shown herein. If the criteria met by the company differs from that shown herein, Staff may lower the tax credit amount to reflect what corresponds to the actual criteria that have been met.

APPROVAL OFFICER: S. Novak

BOND PROJECTS

COMBINATION PRELIMINARY AND FINAL BOND RESOLUTION

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**Stand-Alone Bond****APPLICANT:** Chatham Day School, Inc.

PROD-00258338

PROJECT USER(S): Same as applicant**PROJECT LOCATION:** 700 Shunpike Road Chatham Township Morris**APPLICANT BACKGROUND:**

Chatham Day School, Inc., established in 1998, is a 501(c)(3) not-for-profit organization established for the purpose of providing an independent school education for students in preschool through the 8th grade. The School serves a population of 240 students. David Buffum is the Head of School.

The Applicant is a 501(c)(3) not-for-profit entity for which the Authority may issue tax-exempt bonds as permitted under Section 103 and Section 145 of the 1986 Internal Revenue Code as amended, and is not subject to the State Volume Cap limitation, pursuant to Section 146(g) of the Code.

OTHER NJEDA SERVICES:

A previous request by the Applicant for a tax-exempt bond in the amount of \$5,000,000 closed on 5/12/2005. The interest rate at closing was 5.18%. The bond has been paid in full.

APPROVAL REQUEST:

Authority assistance will enable the Applicant to reduce its interest expense by refinancing existing conventional debt. Proceeds of the bond will also pay the cost of issuance.

FINANCING SUMMARY:**BOND PURCHASER:** Provident Bank (Direct Purchase)**AMOUNT OF BOND:** \$9,000,000 Tax-Exempt Bond.

TERMS OF BOND: 10 years; 25 year amortization. Fixed interest equal to the tax-free equivalent of the 10 year US Treasury Note plus 2.25%, with a taxable rate floor of not less than 3.75% (as of 3/1/2021, approximate tax exempt rate of 2.96%).

ENHANCEMENT: N/A**PRODUCT COSTS:**

Finance Fees	\$165,000.00	Refinancing	\$8,795,000.00
Legal Fees	\$40,000.00		

TOTAL COSTS: \$9,000,000.00
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
40	2	0	0

PUBLIC HEARING: 6/9/2021**BOND COUNSEL:** McCarter & English, LLP**DEVELOPMENT OFFICER:** Kathy Durand**UNDERWRITER OFFICER:** Steven Novak

LOANS/GRANTS/GUARANTEES

HAZARDOUS DISCHARGE SITE REMEDIATION FUND



MEMORANDUM

To: Members of the Authority

From: Tim Sullivan
Chief Executive Officer

Date: June 9, 2021

Subject: Hazardous Discharge Site Remediation (HDSRF) Rule Amendments and Delegated Authority

Summary

The Members are requested to approve:

1. Hazardous Discharge Site Remediation Fund (HDSRF) Rule amendments to conform with amended legislation;
2. Increase EDA staff's delegated authority to approve grant applications under the HDSRF program from \$100,000 to \$500,000; and
3. Provide EDA staff with new delegated authority to approve loan applications up to \$500,000 under the HDSRF program.

Background

The HDSRF was established in July 1993 to provide funding to public and qualifying private entities for the remediation of a suspected or known discharge of a hazardous substance or hazardous waste. The HDSRF is funded through a constitutionally-dedicated portion of the New Jersey Corporate Business Tax, and is administered through a partnership between the New Jersey Department of Environmental Protection (NJDEP) and the New Jersey Economic Development Authority (NJEDA). The NJDEP evaluates an applicant's preliminary eligibility requirements and the estimated remediation costs. Upon the NJDEP's recommendation for funding, the NJEDA evaluates an applicant's financial status, determines grant and/or loan eligibility and awards funding.

This program offers financial assistance to municipalities, counties, redevelopment agencies, businesses, individuals, and non-profit organizations at various stages of the brownfield restoration process, from environmental investigation to cleanup of redevelopment sites. By statute, eligibility for grants is broader for the assessment and investigation phase of the project, with more limited eligibility for funding for cleanups. According to the NJEDA's 2020 Annual

HDSRF report, since the program was established, \$395.3 million in assistance has been provided to 2,052 projects. The HDSRF program has helped to transform underutilized and contaminated sites into environmentally sound, productive properties since 1993. This is particularly important in the redevelopment of older urban areas and New Jersey's most distressed communities, and is vital to achieving a stronger, fairer, greener, and more equitable New Jersey.

Statutory Amendments and Regulatory Amendments

Statutory revisions were recently enacted in 2018 to the Hazardous Discharge Site Remediation program pursuant to P.L. 2017, Chapter 353 (approved January 16, 2018). These statutory amendments require NJEDA to update its regulations to reflect these changes, specifically, the amended HDSRF law requires NJEDA to:

- Develop criteria to demonstrate “commitment” for public entities at N.J.A.C. 19:31-8.3(e)1.iii;
- Incorporate “readiness to proceed with remediation” as a criterion for prioritization of grants at N.J.A.C. 19:31-8.7;
- Update sections to reflect reduced loan and grant amounts; elimination of grants to innocent parties; and timeframes for completion of the Preliminary Assessment, Site Investigation, Remedial Investigation;
- Update rules to reflect the statutory changes that:
 - Enact timeframes for the completion of certain remediation tasks for which the funds were awarded. If certain milestones are not met, the Authority may cancel the award;
 - Require that public entities demonstrate that previous awards have been or will be fully expended, before the Authority will render new financial assistance; and
 - Change the priority of funding awarded from the HDSRF so that properties owned by municipalities in Brownfield Development Areas (BDAs) are given priority over sites in Planning Area 1 (Metropolitan) and Planning Area 2 (Suburban) pursuant to the State Planning Act.

The Authority developed the amendments for the specific criteria to demonstrate (1) the commitment to develop or redevelop the property and (2) the “readiness to proceed with remediation,” as discussed below. Pursuant to N.J.A.C. 19:31-8.3(e)1.iii; the demonstration of a public entity's commitment to develop or redevelop the real property may include, but is not limited to:

- 1) A resolution to complete an investigation to determine whether an area is an area in need of redevelopment or rehabilitation, including the real property;
- 2) A demonstration that the real property is within an area designated as in need of redevelopment or rehabilitation and that the proposed project is consistent with that designation;
- 3) A demonstration that the project plan is consistent with a community-driven vision or need to address environmental or public health issues, as formalized in a plan by a community-based organization (e.g. neighborhood plan);
- 4) A resolution demonstrating financial commitment for a development or redevelopment project by the local governing body; or

- 5) Commitment to leverage other stable financial funding sources, including federal or state funding that may expire, to ensure project viability.

Pursuant to N.J.A.C. 19:31-8.7(a)3(b), demonstration of “readiness to proceed with remediation” shall include securing site control and the retention of a Licensed Site Remediation Professional. An applicant may further demonstrate such “readiness” through local support for the remediation activities, including but not limited to a resolution in support or financial commitment for the investigation or the remediation activities by the local governing body. Additional factors that may be considered, include, but are not limited to (in the order of priority):

- Projects that have a commitment of stable leveraged funding source and require financial assistance or a grant from the Fund to fulfill a cost-share requirement;
- Projects located in a “Community Collaborative Initiative” municipality;
- Projects that have a resolution from the local governing body demonstrating financial commitment for the development or redevelopment project; and
- Projects with stakeholder and community engagement;

In the event that there are multiple projects that meet any one of the specific additional factors listed above, those projects will be further prioritized based on the total number of additional factors they meet.

The proposed rules also codify the appeals process and severability rules, as well as streamline and modernize the underwriting process. The EDA’s underwriting process will determine the applicant’s ability to repay all debt obligations and if there is sufficient support and collateral for our loan.

The proposed amended rules are included as an Attachment to this memorandum. These amendments were developed in consultation with the New Jersey Department of Environmental Protection, in particular brownfields and site remediation program staff, and have received approval by NJDEP’s Chief Advisor for Regulatory and Legislative Affairs. Further, the HDSRF rule amendments have been reviewed by NJEDA’s underwriting staff to ensure consistency with the processing of applications as conducted by the Authority.

Compliance with Executive Order #63

In accordance with the Executive Order 63 directive to ensure outreach efforts are made to the public and affected stakeholders for agency rulemaking, the Authority posted the draft rule proposal on the NJEDA website on March 11, 2021, and has provided a dedicated email address hdsrf@njeda.com to collect comments.

The New Jersey Licensed Site Remediation Professional Association (LSRPA) published information about the statutory changes in their April 6, 2018 newsletter. The Brownfield Coalition of the Northeast (BCONE) published information regarding the statutory changes and solicited stakeholder input in their July 16, 2018 newsletter.

The proposed rules were also presented at the March 9, 2021, NJDEP Quarterly Brownfields Roundtable, at which there are representatives from the regulated community, state agency

representatives from NJDEP, NJEDA, federal government representatives (USEPA) and HUD, local government, and academia. Participants were also provided with a copy of the draft regulations. No substantive comments have been received.

Delegated Authority

NJEDA staff seeks to have its delegated authority threshold increased from \$100,000 to \$500,000 regarding the approval of HDSRF grant applications and establish new delegated authority to approve HDSRF loan requests up to \$500,000. The main purpose of these requests are to minimize delays in the processing and funding of applications that are in the HDSRF program queue. These delegations are consistent with and in some cases much lower than the delegated authority provided for other NJEDA programs. Typical HDSRF grant applications fall within the \$500,000 range (when including the supplemental applications) and these projects are routinely supported by NJEDA and NJDEP. In 2020, approximately one-third of the HDSRF applications approved by NJEDA were within the 100,000 - \$500,000 range. By increasing the delegation threshold to \$500,000, NJEDA staff would be able to process applications for a larger volume of projects. The maximum loan request that may be approved under the HDSRF program is currently \$500,000 per calendar year. By increasing the delegation threshold to \$500,000 for initial and supplemental grant applications and creating delegated authority for loans, NJEDA staff would more efficiently and quickly be able to process all HDSRF applications for a larger volume of projects. Delegated authority would also help streamline and advance the redevelopment of projects more efficiently in the State. Initial and supplemental grant applications and loan applications that exceed \$500,000 would be presented to the Board for approval. This approach is consistent with other recently approved EDA programs, where similar delegated authority was granted for the same purposes.

Recommendation

The Members approve the proposed rule amendments and authorize staff to submit the proposed rule amendments for promulgation in the New Jersey Register, subject to final review and approval by the Office of the Attorney General and the Office of Administrative Law (OAL).

Increase EDA staff's delegated authority to approve grant applications under the HDSRF program from \$100,000 to \$500,000 and provide EDA staff new delegated authority to approve loan applications up to \$500,000 under the HDSRF program.



Tim Sullivan
Chief Executive Officer

Prepared by: Elizabeth Limbrick

Attachment:

- Exhibit A – Proposed Rule Amendments N.J.A.C. 19:31-8 et seq.

DRAFT

OTHER AGENCIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Authority Assistance Programs

Hazardous Discharge Site Remediation Fund

Proposed Amendments: N.J.A.C. 19:31-8.2, 8.3, 8.6, 8.7, 8.9 and 8.10

Proposed New Rules: N.J.A.C. 19:31-8.16 and 8.17

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

Authority: P.L. 2017, c. 353

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

Proposal Number: PRN 2021-____.

Submit written comments by _____, 2021, to:

New Jersey Economic Development Authority
PO Box 990
Trenton, NJ 08625-0990
jgenovay@njeda.com

The agency proposal follows:

Summary

The New Jersey Economic Development Authority (“NJEDA” or “Authority”) is proposing amendments to the rules implementing the Hazardous Discharge Site Remediation Fund (HDSRF) program pursuant to P.L. 2017, Chapter 353 (approved January 16, 2018).

The HDSRF was established in July 1993 to provide funding to public and qualifying private entities for the remediation of a suspected or known discharge of a hazardous substance or hazardous waste. This program offers financial assistance to municipalities, counties, redevelopment agencies, businesses, individuals, and non-profit organizations at various stages of the brownfield restoration process, from environmental investigation to cleanup of redevelopment sites. By statute, eligibility for grants is broader for the assessment and investigation phase of the project, while funding eligibility for cleanups is more limited.

The HDSRF is funded through a constitutionally dedicated portion of the New Jersey Corporate Business Tax, and is administered through a partnership between the New Jersey Department of Environmental Protection (NJDEP) and the New Jersey Economic Development Authority (NJEDA). The NJDEP evaluates an applicant's preliminary eligibility requirements and the estimated remediation costs. Upon the NJDEP's recommendation for funding, the NJEDA evaluates an applicant's financial status, determines grant and/or loan eligibility and awards funding.

In 2018, statutory revisions to the HDSRF program were enacted. While the amendments did not alter the CBT funding source, they did reduce grant and loan amounts to eligible public and private entities and eliminated Innocent Party, Innovative Technology and Limited Restricted Use Remedial Action Grants provided by the HDSRF. Excluding the Brownfield Development Areas, grants to each municipality, county, and redevelopment agency were reduced from \$3 million to \$2 million per year. Municipalities with Brownfield Development Areas continued to be eligible for additional funds, but the amount of the add-on grant was reduced from \$2 million to \$1 million per year. The annual loan program for a person that is not a municipality, county or redevelopment entity was reduced from \$1 million to \$500,000 per year. The total amount of grants available for all recreation and conservation, affordable housing, and renewable energy projects was reduced from \$5 million to \$2.5 million annually. The statute also allocated at least 30 percent of the moneys in the Fund for grants to public entities for the preliminary assessment, site investigation, remedial investigation or remedial action of real property, not located in a brownfield development area, that has been contaminated by a discharge or a suspected discharge of a hazardous substance or hazardous waste. The remainder of the moneys in the Fund shall be allocated for any of the purposes authorized under section 28 of the Act. The statutory revisions also enacted time frames for the expenditure of the preliminary assessment, site investigation and remedial investigation funds, authorizing the NJEDA to cancel the award if they are not met. The amendments revised the prioritization ranking for the HDSRF funded awards, such that a site owned by a municipality in a Brownfield Development Area is prioritized before sites in Planning Area 1 (Metropolitan) and Planning Area 2 (Suburban) pursuant to the State Planning Act.

In addition, the statutory amendments require NJEDA to update its regulations to reflect these changes. Specifically, the amendments to the HDSRF law require NJEDA to develop criteria to demonstrate "commitment" for public entities and to incorporate "readiness to proceed with remediation" as a criterion for prioritization of grants. The proposed rules also streamline and modernize the underwriting process and codify the appeals process and severability rules.

The following provides a summary of the proposed amendments:

N.J.A.C. 19:31-8.2 Definitions

The proposed amendments redefine certain terms used in this subchapter, as follows: "department" is revised to include the words "New Jersey" pertaining to the Department of Environmental Protection; and, "discharge" is revised to include the words "Technical Requirements for Site Remediation" which is the title of N.J.A.C. 7:26E. In addition, the

proposed amendments establish new definitions for “community collaborative initiative,”. Finally, the proposed amendments delete the definitions of “innocent party” and “qualifying person.”

N.J.A.C. 19:31-8.3 Eligibility

The proposed amendments update rule language in conformance with the statute at N.J.A.C. 19:31-8.3(b), which outlines the amount of HSDRF grants that may be made to public entities for eligible projects, as follows:

N.J.A.C. 19:31-8.3(b)1 deletes the terms “contaminated site” which is replaced with “suspected or confirmed discharge of a hazardous substance or hazardous waste” pertaining to preliminary assessment, site investigation or remedial investigation;

Proposed new N.J.A.C. 19:31-8.3(b)2 provides a grant amount not to exceed 75 percent of the total costs of the remedial action for implementation on the real property where there is a confirmed discharge of a hazardous substance or hazardous waste;

The proposed amendments at recodified N.J.A.C. 19:31-8.3(b)6, pertain to certain matching grants, which the pre-amendment statute made eligible for an unrestricted use remediation grant, and deletes the related words, “uses an innovative technology” and “or a limited restricted use remedial action;”

The proposed amendments at recodified N.J.A.C. 19:31-8.3(b)7: 1) delete the terms “on contaminated” and add “where there is a discharge or suspected discharge of a hazardous substance or hazardous waste” in a brownfield development area, for preliminary assessment, site investigation, remedial investigation and remedial action; and, 2) specifies that an ownership interest in the real property shall not be required to receive a grant for a preliminary assessment, site investigation and remedial investigation; and

Proposed new N.J.A.C. 19:31-8.3(b)8 provides that: 1) at least 30 percent of the moneys in the Fund shall be allocated for grants to public entities for the preliminary assessment, site investigation, remedial investigation or remedial action of real property, not located in a brownfield development area, that has been contaminated by a discharge or a suspected discharge of a hazardous substance or hazardous waste; and, 2) the remainder of the moneys in the Fund shall be allocated for any of the purposes authorized under section 28 of the Act.

N.J.A.C. 19:30-8.3(d) addresses grants to persons for eligible projects. The proposed amendments reflect the statutory changes, clarifying that such grants may be made to “qualifying” persons who propose to perform a remedial action that will qualify as an “unrestricted use” remedial action, pursuant to NJDEP regulations. They also clarify that eligibility requires the person to have a net worth of not more than \$2 million.

N.J.A.C. 19:31-8.3(d)1, which provides that for persons who own real property on which there has been a discharge of a hazardous substance or a hazardous waste and that person is an innocent party, a grant may be up to 50 percent of the remediation costs, but shall not exceed the

total grant amount of \$1,000,000, is deleted.

N.J.A.C. 19:31-8.3(d)(3) is deleted and relocated to proposed new N.J.A.C. 19:31-8.3(d)(1).

N.J.A.C. 19:31-8.3(e) relating to preconditions to eligibility for a grant for public entities, is amended at l.iii. to: 1)delete the words “that a realistic opportunity exists” and add the words “otherwise” and “it commitment,” strengthening the provision requiring a public entity to have adopted a comprehensive plan for the development or redevelopment of the property or otherwise show a realistic opportunity for development within three years of the remediation.

Further, subsection N.J.A.C. 19:31-8.3(e)iii was amended to provide that demonstration of a public entity’s commitment to develop or redevelop the real property may include, but is not limited to the following criteria:

1. A resolution to complete an investigation to determine whether an area is in need of redevelopment or rehabilitation including the real property;
2. A demonstration that the real property is within an area designated as in need of redevelopment or rehabilitation and that the proposed project is consistent with that designation;
3. A demonstration that the project plan is consistent with a community-driven vision or a need to address environmental or public health issues, as formalized in a plan by a community-based organization (e.g. neighborhood plan);
4. A resolution demonstrating financial commitment for a development or redevelopment project by the local governing body; or
5. Commitment to leverage other stable financial funding sources, including federal or state funding that may expire, to ensure project viability.

N.J.A.C. 19:31-8.3(e)3, which concerns certain financial assistance from the Fund for persons who cannot establish a remediation funding source for the full amount of the remediation, revises the existing exclusion for public entities or persons who are not required to establish a remediation funding source for certain part(s) of remediation to delete “an innovative technology,” and “an unrestricted use remediation funding source for the part of the remediation involving an innovative technology.”

Proposed new N.J.A.C. 19:31-8.3(e)4i and ii establish the time limits within which an award from the Fund must be spent. Failure to do so will result in cancellation of the award

Proposed new N.J.A.C. 19:31-8.3(e)5 provides that no financial assistance or grant from the Fund shall be rendered to a person or any public entity until it has been demonstrated to the Authority that the full amount of any previous financial assistance or grant awarded to that applicant for the same property has been or will be fully expended.

19:31-8.6 Amount of financial assistance and grants

The proposed amendments at N.J.A.C. 19:31-8.6 revise the amount of financial assistance and grants, as follows: subsection (a) reduces financial assistance and grants that may be for up to 100 percent of the estimated applicable remediation costs for one or more properties, from \$1,000,000 to \$500,000; subsection (b) reduces the financial assistance and grants to any one public entity which shall not exceed \$2,000,000 rather than the existing \$3,000,000 in any calendar year; subsection (c) reduces from \$2,000,000 to \$1,000,000, the maximum additional award the Authority may make in any calendar year to any one public entity for the remediation of real property in a brownfield development area; subsection (d) revises the total cumulative amount of matching grants awarded to public entities to be capped for all at 75 percent of the costs of the remedial action on real property to be used for recreation and conservation purposes, and for up to 75 percent of the costs of the remedial action for renewable energy generation or for up to 50 percent of the costs for affordable housing, which shall not exceed \$2,500,000 rather than \$5,000,000 in any calendar year.

The proposed amendments delete N.J.A.C. 19:31-8.6(e) which provides that grants to an innocent party may be for up to 50 percent of the remediation costs except that no grant may exceed \$1,000,000.

19:31-8.7 Priority system for financial assistance and grants

At N.J.A.C. 19:31-8.7(a), amendments alter the priority for assistance and bring other criteria into line with the statute. Priority shall be based on readiness to proceed with remediation as determined by the Department and the Authority. In addition, the order of priority to determine availability of sufficient moneys in the Fund for the purpose of the financial assistance or grant, subject to credit approval by the Authority, is revised to delete paragraph (a)2 pertaining to sites in areas designated as Planning Area 1, Planning Area 2, designated centers, or areas receiving plan endorsement as designated pursuant to the "State Planning Act," section 1 through 12 of P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.), sites that the Brownfields Redevelopment Task Force, established pursuant to section 5 of P.L. 1997, c. 278 (N.J.S.A. 58:10B-23), determines are of immediate economic development potential, and sites in brownfield development areas, which is replaced with the provision at proposed new N.J.A.C. 19:31-8.7(a)2 for "sites that are owned by a municipality in a brownfield development area" and the provision at proposed new N.J.A.C. 19:31-8.7(a)3 for "sites in areas designated as Planning Area 1 (Metropolitan) and Planning Area 2 (Suburban) pursuant to the "State Planning Act," P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.)."

The proposed amendments delete and recodify N.J.A.C. 19:31-8.7(a)3 as proposed new N.J.A.C. 19:31-8.7(c) which provides that the Chief Executive Officer of the Authority shall, from time to time review the allocation of moneys in the Fund and the requirements of applicants for money from the Fund and reallocate the moneys to the extent permissible under section 28(a) of the Act.

Proposed new N.J.A.C. 19:31-8.7(b) establishes the criteria for the demonstration of readiness to proceed with the remediation, which shall include proof of ownership or control over the real property and the retention of a Licensed Site Remediation Professional. Additional

factors that may be considered include, but are not limited to: whether the project is located in a municipality designated as part of the Community Collaborative Initiative; whether the project was developed through stakeholder and community engagement; documentation of a resolution by the local governing body demonstrating financial commitment for a development or redevelopment project; or documentation that the project has a commitment of a stable leveraged funding source and requires financial assistance or a grant from the Fund to fulfill a cost-share requirement.

19:31-8.9 Application for financial assistance and grants

The proposed amendment at N.J.A.C. 19:31-8.9(c), which pertains to priority given for applicants for financial assistance and grants, is revised to include new provisions for readiness to proceed with the remediation and for availability of sufficient moneys in the Fund for the purpose of the financial assistance or grant, subject to any priority given under N.J.A.C. 19:31-8.7 and credit approval by the Authority.

N.J.A.C. 19:31-8.9(f), which delineate to the requirements for a completed application, is revised to include new provisions which add criteria for demonstrating that the real property will be redeveloped within three years from the completion of the remediation, and demonstrating readiness to proceed with remediation at new paragraphs 3 and 4.

N.J.A.C. 19:31-8.9(h), consistent with the Authority's application and underwriting process, deletes the provision that within 45 days of the receipt of a completed application, a determination will be made to recommend approval to the Members or deny the application.

19 :31-8.10 Evaluation process for financial assistance and grants

The proposed amendments at N.J.A.C. 19:31-8.10(a) delete the words "credit evaluation based upon applicable criteria as determined by the Authority, including" and paragraphs 1 through 8. The words "underwriting analysis" are added to make clear that the Authority will perform its own underwriting analysis.

Proposed New 19.31-8.16 Appeals

The new section outlines the requirements for an applicant to appeal an action of the EDA Board and the process by which the Authority shall consider each appeal in a timely manner.

Proposed new 19.31- 8.17 Severability

The new section states that if any portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of the subchapter are severable and shall not be affected by that determination.

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

Social Impact

The remediation and redevelopment of contaminated sites in communities is a critical component of smart development that provide multiple social benefits, including cleaning up the environment which protects human health, removing blight, eliminating health and safety hazards and alleviating concerns from residents. This remediations leads to redevelopment that fosters safer, stronger, and more vibrant communities.

Economic Impact

According to the NJEDA's 2020 Annual HDSRF report, since the program was established, \$395.3 million in assistance has been provided to 2,052 projects. The HDSRF program has helped to transform underutilized and contaminated sites into environmentally sound, productive properties since 1993. This is particularly important in the redevelopment of older urban areas and New Jersey's most distressed communities, and is vital to achieving the a stronger, fairer, greener, and more equitable New Jersey. These rule changes will allow NJEDA and NJDEP to prioritize projects that will complete remediation to allow for redevelopment which supports economic prosperity.

Federal Standards Statement

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

Jobs Impact

The EDA anticipates that the proposed amendments will spur an indeterminate amount of increased job creation throughout New Jersey. The United States Environmental Protection Agency reports that 10.3 jobs were leveraged per \$100,000 of United States Environmental Protection Agency brownfield funds spent on assessment and cleanup activities. It is expected that HDSRF would have a similar impact in New Jersey.

Agriculture Industry Impact

The proposed amendments will have minimal impact on the agriculture industry in New Jersey. The impacts to the agricultural industry would be concentrated on former agriculture land that will be remediated, and land may be redeveloped for agriculture uses. Additionally, remediating land so that it can be repurposed for other uses, will take development pressure off of farmland.

Regulatory Flexibility Statement

The proposed new rules may impose reporting, recordkeeping, or other compliance requirements on small business, such as consulting companies, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, any costs will be minimal and fully offset by the amount of financial assistance received. The proposed fees for the program are intended to

ensure a source of necessary administrative fee revenue for EDA to more fully cover the costs of the program.

Housing Affordability Impact Analysis

The proposed amendments will have indirect effects on affordable housing in New Jersey and may evoke a change in the average costs associated with housing units, including multi-family rental housing and for sale housing in the State. Remediating land so that it can be repurposed for other uses, such as housing, will increase the availability and affordability of housing throughout the state, with a larger impact in urban areas.

Smart Growth Development Impact Analysis

The proposed amendments may have a positive smart growth impact and may increase the number of housing units and may result in a decrease in the average cost of housing or in housing production in Planning Areas 1 or 2, under the State Development and Redevelopment Plan. The proposed amendments will continue to prioritize applications for sites that are owned by a municipality in a brownfield development area; and Sites in areas designated as Planning Area 1 (Metropolitan) and Planning Area 2 (Suburban) pursuant to the “State Planning Act”, and have added additional factors that for prioritization that are consistent with Smart Growth principles.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The proposed amendments will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State.

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

SUBCHAPTER 8. HAZARDOUS DISCHARGE SITE REMEDIATION FUND

19:31-8.2 Definitions

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

...

“Community Collaborative Initiative” means the partnership established between the New Jersey Department of Environmental Protection and the Authority where Department staff are assigned to work directly with Department-designated communities to address environmental and redevelopment issues.

“Department” means the New Jersey Department of Environmental Protection.

“Discharge” shall have the same meaning as set forth at N.J.A.C. 7:26E **Technical Requirements for Site Remediation.**

...

[“Innocent party” means a person who:

1. Acquired the real property prior to December 31, 1983 and continues to own the real property at least until the Authority renders final approval to the grant;
2. Demonstrates that the hazardous substance or hazardous waste that was discharged at the real property was not used by that person, or by any person that had permission to use the site from the applicant; and
3. Certifies that the applicant or any person that had permission to use the site from the applicant did not discharge any hazardous substance or hazardous waste at an area where a discharge is discovered.]

...

[“Qualifying person” means any person who has a net worth of not more than \$ 2 million.]

...

19:31-8.3 Eligibility

(a) Financial assistance from the Fund may be made for eligible projects to public entities for:

1.-2. (No change.)

(b) Grants from the Fund may be made for eligible projects to public entities for:

1. Preliminary assessment, site investigation, or remedial investigation of a [contaminated site] **suspected or confirmed discharge of a hazardous substance or hazardous waste;**

2. Implementation of remedial action for real property where there is a confirmed discharge of a hazardous substance or hazardous waste, not to exceed 75 percent of the total costs of the remedial action;

Recodify existing 2. through 4. as 3. through 5. (No change in text.)

[5.]**6. Matching grants of up to 25 percent of the project costs of that portion of the total costs of a remediation to implement an unrestricted use remedial action,** in a total amount not to exceed \$250,000, to public entities which propose to perform a remedial action. [uses an innovative technology or that] [or a limited restricted use remedial action; and];

[6.]7. In a brownfield development area, for preliminary assessment, site investigation, remedial investigation and remedial action [on contaminated] **for real property where there is a discharge or suspected discharge of a hazardous substance or hazardous waste.** An ownership interest in the real property shall not be required **to receive a grant for a preliminary assessment, site investigation and remedial investigation;** however, any grant awarded for remedial action on real property not owned by the public entity shall be subject to the lien provisions set forth in N.J.A.C. 19:31-8.4[.]; **and**

8. At least 30 percent of the moneys in the Fund shall be allocated for grants to public entities for the preliminary assessment, site investigation, remedial investigation or remedial action of real property, not located in a brownfield development area, that has been contaminated by a discharge or a suspected discharge of a hazardous substance or hazardous waste. The remainder of the moneys in the Fund shall be allocated for any of the purposes authorized under section 28 of the Act.

(c) Financial assistance from the Fund may be made for eligible projects to persons for:

1.-4. (No change.)

(d) Grants from the Fund may be made for eligible projects to **qualifying persons who are applying for a matching grant and proposing to perform a remedial action for the implementation of an unrestricted use remedial action and who have a net worth of not more than \$2 million** for:

[1. Persons who own real property on which there has been a discharge of a hazardous substance or a hazardous waste and that person is an innocent party, a grant may be up to 50 percent of the remediation costs, but shall not exceed the total grant amount of \$1,000,000;]

1. Matching grants of up to 25 percent of the project costs of that portion of the total costs of a remediation to implement an unrestricted use remedial action, incurred after receipt of the application by the Department, in a total grant amount not to exceed \$250,000; and

2. An owner or operator of a child care center licensed pursuant to P.L. 1983, c. 492 (N.J.S.A. 30:5B-1 et seq.), or a prospective owner or operator of a child care center who has applied for a license pursuant to P.L. 1983, c. 492 (N.J.S.A. 30:5B-1 et seq.), a grant of \$1,500 for the costs of a preliminary assessment performed in order to obtain a no further action letter as required pursuant to the provisions of subsection b. of section 2 of P.L. 2007, c. 1 (N.J.S.A. 52:27D-130.5) or performed as part of the child care center licensing requirements established by the Department of Children and Families[; and].

[3. Matching grants of up to 25 percent of the project costs incurred after receipt of the application by the Department, in a total grant amount not to exceed \$250,000 to qualifying persons who propose to perform a remedial action that uses an innovative technology or that would result in an unrestricted use remedial action or a limited restricted use remedial action.]

(e) Preconditions to eligibility are as follows:

1. For public entities:

i. (No change.)

ii. Except for a grant awarded pursuant to (b)[2,] 3, **4** or [6] **7** above, no grant or financial assistance shall be awarded for a remedial action until the public entity actually owns the real property.

iii. No grant shall be awarded unless the public entity has adopted a comprehensive plan for the development or redevelopment of contaminated, or potentially contaminated real property, or can **otherwise demonstrate its commitment** to the Authority [that a realistic opportunity exists] that the real property will be developed or redeveloped within three years from the completion of the remediation. **Demonstration of a public entity's commitment to develop or redevelop the real property may include, but is not limited to:**

(1) A resolution to complete an investigation to determine whether an area is in need of redevelopment or rehabilitation including the real property;

(2) A demonstration that the real property is within an area designated as in need of redevelopment or rehabilitation and that the proposed project is consistent with that designation;

(3) A demonstration that the project plan is consistent with a community-driven vision or need to address environmental or public health issues, as formalized in a plan by a community-based organization (e.g. neighborhood plan);

(4) A resolution demonstrating financial commitment for a development or redevelopment project by the local governing body; or

(5) Commitment to leverage other stable financial funding sources, including federal or state funding that may expire, to ensure project viability.

2. (No change.)

3. Financial assistance from the Fund may only be rendered to persons who cannot establish a remediation funding source for the full amount of the remediation and may be rendered only for that amount of the cost of remediation for which the person cannot establish a remediation funding source. An applicant for financial assistance or a grant shall certify to the Department and to the Authority that it cannot establish a remediation funding source for all or part of the remediation costs. This requirement shall not apply to public entities or to persons who are not required to establish a remediation funding source for the part of the remediation involving an [innovative technology, an unrestricted use remediation funding source for the part of the remediation involving an innovative technology], an unrestricted use remedial action, persons

performing a remediation in an environmental opportunity zone, or persons who voluntarily perform a remediation.

4. Failure to expend an award of financial assistance or grant from the Fund within the following time limits shall result in the cancellation of the award, recoupment of unexpended funds if funds are provided prior to incurring costs, and no further disbursement of unexpended funds:

i. Preliminary assessment or site investigation of a contaminated site shall be expended within two years after the date of the award; and

ii. Remedial investigation of a contaminated site shall be expended within five years after the date of the award, unless such time is extended by the Authority in consultation with the Department; and

5. No financial assistance or grant from the Fund shall be rendered to a person or any public entity until it has been demonstrated to the Authority that the full amount of any previous financial assistance or grant awarded to that applicant for the same property has been or will be fully expended; and

(f) (No change.)

19:31-8.6 Amount of financial assistance and grants

(a) Financial assistance and grants may be for up to 100 percent of the estimated applicable remediation costs, except that the cumulative maximum amount of financial assistance to a person in any calendar year, for one or more properties, shall be [\$1,000,000] **\$500,000**.

(b) Financial assistance and grants to any one public entity shall not exceed [\$3,000,000] **\$2,000,000** in any calendar year, except as provided in (c) below.

(c) The Authority may award an additional amount of up to [\$2,000,000] **\$1,000,000** of financial assistance and grants in any calendar year to any one public entity for the remediation of real property in a brownfield development area.

(d) The total cumulative amount of matching grants awarded to public entities for **up to 75 percent of the costs of the** remedial action of real property to be used for recreation and conservation purposes, for **up to 75 percent of the costs of the remedial action for** renewable energy generation or for **up to 50 percent of the costs for** affordable housing, shall not exceed [\$5,000,000] **\$2,500,000** in any calendar year.

[(e) Grants to an innocent party may be for up to 50 percent of the remediation costs except that no grant may exceed \$1,000,000.]

Recodify existing (f) and (g) as (e) and (f) (No change in text.)

19:31-8.7 Priority system for financial assistance and grants

(a) An eligible proposal, as determined by the Department, for financial assistance or a grant from the Fund shall be given priority for financial assistance or a grant by the Authority based on the date of receipt by the Authority of a completed application, **readiness to proceed with remediation as determined by the Department and the Authority**, and the availability of sufficient moneys in the Fund for the purpose of the financial assistance or grant, subject to credit approval by the Authority and other criteria as established by this rule in the following order of priority:

1. Sites on which there has been a discharge and the discharge poses an imminent and significant threat to a drinking water source, to human health, or to a sensitive or significant ecological area; [and]

[2. Sites in areas designated as Planning Area 1, Planning Area 2, designated centers, or areas receiving plan endorsement as designated pursuant to the "State Planning Act," section 1 through 12 of P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.), sites that the Brownfields Redevelopment Task Force, established pursuant to section 5 of P.L. 1997, c. 278 (N.J.S.A. 58:10B-23), determines are of immediate economic development potential, and sites in brownfield development areas.]

2. Sites that are owned by a municipality in a brownfield development area; and

3. Sites in areas designated as Planning Area 1 (Metropolitan) and Planning Area 2 (Suburban) pursuant to the "State Planning Act," P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.).

[3. The Chief Executive Officer of the Authority shall, from time to time review the allocation of moneys in the Fund and the requirements of applicants for money from the Fund and reallocate the moneys to the extent permissible under section 28(a) of the Act.]

(b) Demonstration of readiness to proceed with the remediation shall, at a minimum, include proof of ownership or control over the real property and retention of a Licensed Site Remediation Professional. Additional factors that may be considered include, but are not limited to: whether the project is located in a municipality designated as part of the Community Collaborative Initiative; whether the project was developed through stakeholder and community engagement; documentation of a resolution by the local governing body demonstrating financial commitment for a development or redevelopment project; or documentation that the project has a commitment of a stable leveraged funding source and requires financial assistance or a grant from the Fund to fulfill a cost-share requirement.

(c) The Chief Executive Officer of the Authority shall, from time to time review the allocation of moneys in the Fund and the requirements of applicants for money from the Fund and reallocate the moneys to the extent permissible under section 28(a) of the Act.

19:31-8.9 Application for financial assistance and grants

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

(c) The applicant will be given priority for financial assistance and grants based on the date of receipt by the Authority of a completed application, **readiness to proceed with the remediation, and availability of sufficient moneys in the Fund for the purpose of the financial assistance or grant**, subject to any priority given under N.J.A.C. 19:31-8.7 **and credit approval by the Authority.**

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

(f) A completed application shall include, if applicable as determined by the Authority:

1.-2. (No change.)

3. Where a public entity is applying for a grant, either an adopted comprehensive plan for the development or redevelopment of contaminated, or potentially contaminated real property, or demonstration of commitment that the real property will be developed or redeveloped within three years from the completion of the remediation, pursuant to N.J.A.C. 19:31-8.3;

4. Demonstration of readiness to proceed with remediation, as required to be prioritized for the ranking pursuant to N.J.A.C. 19:31-8.7;

Recodify existing 3. through 9. and 5. through 11. (No change in text).

(g) (No change.)

(h) Applications are processed through several layers of staff review, and may then be recommended for consideration and official action of the Authority Members at a public meeting. [Within 45 days of the receipt of a completed application, a determination will be made to recommend approval to the Members or deny the application.] The applicant has no right to have its application presented to the Members.

19:31-8.10 Evaluation process for financial assistance and grants

(a) When all of the required information is received, the Authority will perform its own [credit evaluation based upon applicable criteria as determined by the Authority, including:

1. Visitation to the applicant's place of business, or real property which is the subject of the application;

2. An analysis of historic and projected financial statements and a comparison to industry peers;

3. An independent industry study using source material such as the U.S. Department of Commerce's Industrial Outlook and the Standard & Poor's Industry survey, comparing the applicant's projections to the study, and considering the short term and long term outlook for the industry;

4. Contact with applicant's customers to ascertain the quality of the product or service provided, the competitiveness of the pricing, reliability and timeliness of delivery, length of the relationship, likelihood of the relationship being continued, and the customers' opinions of the applicant's management;

5. Contact with applicant's suppliers to ascertain the length of the relationship, the amount of credit extended, the amount of purchases, payment history, the likelihood of the relationship being continued, and possibly an opinion of applicant's management;

6. Contact with applicant's bank(s) to ascertain credit history and an opinion of the applicant's management;

7. An analysis of collateral available to secure the requested financing as to adequacy of amount, quality, condition and marketability;

8. Independent credit investigations of the applicant and its principals, which may include real estate searches, financing statement searches, and judgment and lien searches; and

9.] **underwriting criteria.** For public entities, all Local Finance Board requirements must be satisfied.

(b)-(c) (No change.)

19.31-8.16 Appeals

(a) The Board's action shall be effective 10 business days after the Governor's receipt of the minutes, provided neither an early approval nor veto has been issued.

(b) An applicant may appeal the Board's action by submitting in writing to the Authority, within 20 calendar days from the effective date of the Board's action, an explanation as to how the applicant has met the program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(c) Appeals that are timely submitted shall be handled by the Authority as follows:

1. The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The Authority

may consider new evidence or information that would demonstrate that the applicant meets all of the application criteria.

2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. After reviewing the report, the Chief Executive Officer of the Authority may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.

3. The Board shall consider the hearing officer's report, the recommendation of the Chief Executive Officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Board shall issue a final decision on the appeal.

4. Final decisions rendered by the Board shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.

19.31- 8.17 Severability

If any section, subsection, provision, clause, or portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: June 9, 2021

SUBJECT: NJDEP Hazardous Discharge Site Remediation Fund Program

The following municipal projects have been approved by the Department of Environmental Protection to perform remedial investigation and remedial action activities. The scope of work is described on the attached product summaries:

HDSRF Municipal Grants:

Prod 257956	Camden Redevelopment Agency (BDA Knox Gelatin Meadows II)	\$ 103,825.00
Prod 257957	Camden Redevelopment Agency (BDA Knox Gelatin Meadows II)	\$1,136,612.00
Prod 258423	Borough of Pennington (Pennington Borough Sanitary Landfill)	\$ 312,041.58
Total HDSRF Funding –June 2021		\$1,552,478.58

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

Tim Sullivan, CEO

Prepared by: Kathy Junghans

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**Hazardous Discharge Site Remediation - Government Facility****APPLICANT:** BDA - Camden Redevelopment Agency

PROD-00257956

PROJECT USER(S): Same as applicant**PROJECT LOCATION:** Bryon Street and North 5th Street Camden City Camden County**APPLICANT BACKGROUND:**

Camden Redevelopment Agency (CRA) , identified as Block 746, Lots 17,18,25,26 & 46 is a former manufacturing facility which has potential environmental areas of concern (AOCs). The Camden Redevelopment Agency owns the project site and has satisfied proof of site control. It is CRA's intent upon completion of the environmental investigation activities to redevelop the project site for residential and recreational use.

NJDEP has approved this request for Remedial Investigation (RI) grant funding on the above-referenced project site and finds the project technically eligible under the HDSRF program, Category 2, Series A.

The City has received a Brownfield Development Area (BDA) designation from the NJDEP for this project site.

OTHER NJEDA SERVICES:

None

APPROVAL REQUEST:

Camden Redevelopment Agency is requesting grant funding to perform RI in the amount of \$103,825 at the former Knox Gelatin Meadows II project site. CRA has a concurrent grant funding request for Remedial Action (RA) under Product 257957 in the amount of \$1,136,612. Total grant funding including this project is \$1,240,437.

FINANCING SUMMARY:**GRANTOR:** Hazardous Discharge Site Remediation Fund**AMOUNT OF GRANT:** \$103,825.00**TERMS OF GRANT:** No Interest; No Repayment**PROJECT COSTS:**

Remedial Investigation	\$103,825.00
EDA Administrative Cost	\$500.00

TOTAL COSTS:	\$104,325.00
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DATE: 5/28/2021

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**Hazardous Discharge Site Remediation - Government Facility****APPLICANT:** BDA - Camden Redevelopment Agency

PROD-00257957

PROJECT USER(S): Same as applicant**PROJECT LOCATION:** Bryon Street & North 5th Street Camden City Camden County**APPLICANT BACKGROUND:**

Camden Redevelopment Agency (CRA), identified as Block 746, Lots 17,18,25,26 & 46 is a former manufacturing facility which has potential environmental areas of concern (AOCs). Camden Redevelopment Agency owns the project site and has satisfied proof of site control. It is the CRA's intent upon completion of the environmental remediation activities to redevelop the project site for residential use.

NJDEP has approved this request for Remedial Action (RA) grant funding on the above-referenced project site and finds the project technically eligible under the HDSRF program, Category 2, Series A.

The City has received a Brownfield Development Area (BDA) designation from the NJDEP for this project site.

According to the HDSRF legislation, a grant can be awarded to a municipality, county or redevelopment entity authorized to exercise redevelopment powers up to 75% of the costs of remedial action for projects within a BDA. The grant has been calculated off 75% of the RA costs \$1,515,483. The remaining 25% of the RA costs is being paid from a grant and revolving loan fund provided by the USEPA.

OTHER NJEDA SERVICES:

None

APPROVAL REQUEST:

Camden Redevelopment Agency is requesting grant funding to perform RA in the amount of \$1,136,612 at the former Knox Gelatin Meadows II project site.

CRA has a concurrent grant request for Remedial Investigation (RI) under Product 257956 in the amount of \$103,825. Total grant funding including this project is \$1,240,437.

FINANCING SUMMARY:**GRANTOR:** Hazardous Discharge Site Remediation Fund**AMOUNT OF GRANT:** \$1,136,612.00**TERMS OF GRANT:** No Interest; No Repayment**PROJECT COSTS:**

\$1,136,612.00

EDA Administrative Cost

\$500.00

TOTAL COSTS: \$1,137,112.00
DATE: 5/28/2021

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**Hazardous Discharge Site Remediation - Government Facility****APPLICANT:** Pennington Borough

PROD-00258423

PROJECT USER(S): Same as applicant**PROJECT LOCATION:** Delaware Avenue Pennington Borough Mercer County**APPLICANT BACKGROUND:**

In May 2019, the Borough of Pennington received a grant in the amount of \$301,604 under P45165 for remedial investigation at the project site. The project site a former landfill which has potential environmental areas of concern (AOCs). The Borough of Pennington owns the project site and has satisfied proof of site control. It is the Borough's intent upon completion of the environmental remediation activities to redevelop the project site for recreational use.

NJDEP has approved this supplemental request for Remedial Investigation (RI) grant funding on the above-referenced project site and finds the project technically eligible under the HDSRF program, Category 2, Series A.

OTHER NJEDA SERVICES:

None

APPROVAL REQUEST:

Borough of Pennington is requesting supplemental grant funding to perform RI in the amount of \$312,041.58 at the Pennington Borough Sanitary Landfill project site. Total grant funding including this approval is \$613,645.58.

FINANCING SUMMARY:**GRANTOR:** Hazardous Discharge Site Remediation Fund**AMOUNT OF GRANT:** \$312,041.58**TERMS OF GRANT:** No Interest; No Repayment**PROJECT COSTS:**

Remedial Investigation	\$312,041.58
EDA Administrative Cost	\$500.00

TOTAL COSTS:	\$312,541.58
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DATE: 5/28/2021

PETROLEUM UNDERGROUND STORAGE TANK (PUST)



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: June 9, 2021

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

The following residential and commercial projects have 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 summaries:

PUST Grants:

Residential

Prod 188307	Susie Hobbs	\$11,419.94
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Commercial

Pro 228033	Fouad Nouri	\$150,690.66
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Total UST Funding – June 2021	\$162,110.60
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A handwritten signature in blue ink, appearing to read "T. Sullivan", is positioned above a horizontal line.

Tim Sullivan, CEO

Prepared by: Kathy Junghans

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**Underground Storage Tank - Residential****APPLICANT:** Susie Hobbs

PROD-00188307

PROJECT USER(S): Same as applicant**PROJECT LOCATION:** 304 Washington Drive Pennsville Township Salem County**APPLICANT BACKGROUND:**

Between December 2017 and June 2019, Susie Hobbs received an initial grant in the amount of \$11,940 under P43542 and a supplemental grant in the amount of \$95,118 under P45560 to remove a leaking 550-gallon residential #2 heating underground storage tank (UST) and perform the required remediation. The tank was decommissioned and removed in accordance with NJDEP requirements. The NJDEP has determined that the project costs are technically eligible to perform additional remedial activities.

Financial statements provided by the applicants demonstrate that the applicants' financial condition conforms to the financial hardship test for a conditional hardship grant.

OTHER NJEDA SERVICES:

None

APPROVAL REQUEST:

The applicant is requesting aggregate supplemental grant funding in the amount of \$11,419.94 to perform the approved scope of work at the project site. Because the aggregate supplemental funding including this request is \$106,537.94, it exceeds the maximum aggregate staff delegation approval of \$100,000 and therefore requires EDA's board approval. Total grant funding including this approval is \$118,477.94.

FINANCING SUMMARY:**GRANTOR:** Petroleum UST Remediation, Upgrade & Closure Fund**AMOUNT OF GRANT:** \$11,419.94**TERMS OF GRANT:** No Interest; No Repayment**PROJECT COSTS:**

UST Project: Upgrade, Closure, Remediation	\$11,419.94
EDA Administrative Cost	\$250.00

TOTAL COSTS:	\$11,669.94
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DATE: 5/28/2021

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**Underground Storage Tank - Commercial****APPLICANT:** Fouad Nouri

PROD-00228033

PROJECT USER(S): Same as applicant**PROJECT LOCATION:** 503 21st Avenue Paterson City Passaic County**APPLICANT BACKGROUND:**

Between October 2000 and November 2014, Nouri's Auto Repair Inc., owned by Fouad Nouri, received an initial grant in the amount of \$65,700 under P11263 and supplemental grants totaling \$662,420 under P12509, P14189, P16423, P20764, P30527 and P38575 to remove a leaking underground storage tank. The tank was decommissioned and removed in accordance with NJDEP requirements. The NJDEP has determined that the supplemental project costs are technically eligible to perform extensive groundwater remediation.

Financial statements provided by the applicant demonstrate that the applicant's financial condition conforms to the financial test for a conditional hardship grant.

OTHER NJEDA SERVICES:

None

APPROVAL REQUEST:

The applicant is requesting an additional supplemental grant in the amount of \$150,690.66 to perform the approved scope of work at the project site. Total grant funding including this approval is \$813,110.66 which is permitted under the \$1,000,000 limit for projects within a Metropolitan Planning Area.

FINANCING SUMMARY:**GRANTOR:** Petroleum UST Remediation, Upgrade & Closure Fund**AMOUNT OF GRANT:** \$150,690.66**TERMS OF GRANT:** No Interest; No Repayment**PROJECT COSTS:**

\$150,690.66

EDA Administrative Cost

\$500.00

TOTAL COSTS:**\$151,190.66****DATE:** 5/28/2021

BOARD MEMORANDA -FYI ONLY



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: June 9, 2021

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

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

Micro Business Loan Program:

- 1) A & A Fitness Inc. DBA The Max Challenge of Springfield (PROD-00228223 & 00258419), located in Union Township, Union County, was formed in 2014 as a gym and fitness studio that also offers national coaching. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable loan. Proceeds will be used to supplement working capital and to purchase equipment. The Company currently has two employees.
- 2) AARPS Robotics LLC DBA Code Ninjas Edison (PROD-00228389 & 00258487), located in Woodbridge Township, Middlesex County, was formed in 2019 as a startup school geared toward teaching computer programming through its engaging, game-based curriculum. The NJEDA approved a \$45,000 working capital loan and a \$5,000 forgivable loan. Proceeds will be used to supplement payroll, rent and other utilities. The Company currently has two employees.
- 3) AZ Express Car & Limousine Service (PROD-00224275 & 00258452), located in Edison Township, Middlesex County, was formed in 2017 as a limousine car service in Edison, NJ. The NJEDA approved a \$20,700 working capital loan and a \$2,300 forgivable loan. Proceeds will be used to cover business operating expenses. The Company currently has one employee.
- 4) Belkys Santos DBA Moonlight Travel & Multiservice Agency (PROD-00224363 & 00258624), is located in Passaic City, Passaic County. The Company was established in 1998 as a multiservice office that supports the local community with booking travel arrangements and financial services like bill pay, sending money transfers to other countries and tax filings. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable loan. Proceeds will be used to supplement rent, inventory, taxes and utilities expenses. The Company currently has one employee.
- 5) Beyond Tech Beauty Inc. (PROD-00224367 & 00258407), located in Englewood City, Bergen County, was established in 2016 as the east coast sole distributor that has carried Le Mieux products for the past five years. Services include customer service, training and distribution of all Le Mieux products. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable loan. Proceeds will be used to supplement payroll and rent expenses. The Company currently has one employee.

- 6) Binita Enterprise LLC DBA Garden State News & Magazines (PROD-00228295 & 00258776) is located in Rahway City, Union County. The Company was established in 2013 as a convenience store located within walking distance of the Rahway train station. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable loan. Proceeds will be used to supplement rent, inventory and utilities expenses. The Company currently has one employee.
- 7) Clean N Bright Laundromat Inc. (PROD-00228264 & 00258456), located in Union City, Hudson County, was established in 2019 as a two-location laundromat business. The NJEDA approved a \$45,000 working capital loan and a \$5,000 forgivable loan. Proceeds will be used to supplement payroll and rent expenses. The Company currently has four employees.
- 8) Dashkipride LLC (PROD-00228217 & 00264603), located in Clark Township, Union County, was established in 2016 as a woman-owned online clothing company that makes contemporary Afrocentric clothes and accessories. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable loan. Proceeds will be used to purchase inventory. The Company currently has four employees.
- 9) Earn Into Wealth Strategies, LLC (PROD-00228350 & 00258488), located in Cliffside Park Borough, Bergen County, was formed in 2015 as a financial planning practice. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable loan. Proceeds will be used to supplement payroll. The Company currently has two employees.
- 10) Excellence in Education LLC DBA Silver Oak Learning Centers (PROD-00224386 & 00258496) is located in Clifton Township, Hunterdon County. The Company was established in 2015 as a K-12 tutoring and exam preparation center and has an additional location in Flemington Borough. The NJEDA approved a \$21,600 working capital loan and a \$2,400 forgivable loan. Proceeds will be used to supplement rental costs for both locations. The Company currently has two employees.
- 11) Feva Nation Limited Liability Company (PROD-00224228 & 00258590), located in Newark City, Essex County, was formed in 2010 to provide educational services to learn film, fashion, dance, music and entertainment. They offer programs for behavior therapy for students K-12 and children with special needs or disabilities. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable loan. Proceeds will be used to supplement payroll and purchase equipment. The Company currently has one employee.
- 12) Hawk Haven Vineyard LLC (PROD-00224519 & 00258592), located in Middle Township, Cape May County, was established in 2008 as a NJ licensed vineyard and winery. The Company grows grapes, produce and bottle wines on premises and operate a tasting room and restaurant, daycare and camps/classes for various ages. The NJEDA approved a \$45,000 working capital loan and a \$5,000 forgivable loan. Proceeds will be used to supplement inventory and payroll costs. The Company currently has seven employees.
- 13) Heat Holistic Lifestyle Program A NJ Nonprofit Corporation DBA Heat Holistic Lifestyle Program (PROD-00228157 & 00258439), is located in National Park Borough, Gloucester County. The Company was formed in 2013 to provide support coordination to adults with developmental disabilities and mental and behavioral health services to children diagnosed with mental and behavioral disorders. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable loan. Proceeds will be used to supplement payroll. The Company currently has one employee.

- 14) Hopewell Valley Vineyards, LLC (PROD-00228380 & 00265873), located in Hopewell Township, Mercer County, was established in 2003 as a winery and vineyard. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable loan. Proceeds will be used to supplement payroll, inventory and utilities expenses. The Company currently has four employees.
- 15) INNOZA TECH LLC (PROD-00228316 & 00258508), located in North Brunswick Township, Middlesex County, was established in 2015 as a home-based IT staffing and consulting company that primarily caters two state government staffing needs. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable loan. Proceeds will be used to supplement payroll. The Company currently has two employees.
- 16) Intelligraph Inc. DBA BoCon (PROD-00224420 & 00258395), located in Palisades Park Borough, Bergen County, was formed in 2003. The Company is a small-scale construction company, home improvement, and interior designer firm that specializes in residential and commercial properties. The NJEDA approved a \$38,790 working capital loan and a \$4,310 forgivable loan. Proceeds will be used to purchase equipment, supplement payroll and rent expenses. The Company currently has two employees.
- 17) K K Dream Inc DBA K K Nails & Beauty, (PROD-00228361 & 00258533), located in Lawrence Township, Mercer County, was established in 2019 as a nail salon that provides nail care, waxing and massage services. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable loan. Proceeds will be used to supplement lease payments. The Company currently has five employees.
- 18) Koni Ameri Tech Services, Inc. (PROD-00228429 & 00258387), located in East Windsor Township, Mercer County, was established in 1993 as an IT company delivering services, solutions and products to enterprises worldwide. The NJEDA approved a \$20,700 working capital loan and a \$2,300 forgivable loan. Proceeds will be used to supplement payroll, software/subscription costs. The Company currently has three employees.
- 19) Krishna II LLC DBA Broughton Deli (PROD-00228212 & 00258578), located in Bloomfield Township, Essex County, was formed in 2006 as a convenience store/deli that sells lottery tickets. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable loan. Proceeds will be used to supplement rent, payroll and utilities. The Company currently has one employee.
- 20) MAJIBAPU LLC (PROD-00228180 & 00258429), located in Carteret Borough, Middlesex County, was established in 2013 as a convenience store that sells food, drinks, and lottery. The NJEDA approved a \$20,939.02 working capital loan and a \$2,326.56 forgivable loan. Proceeds will be used to supplement inventory, payroll and utility expenses. The Company currently has one employee.
- 21) Pjpushpa LLC DBA Superwash of Linden (PROD-00224478 & 00258527), located in Linden City, Union County, was established in 2009 as a laundromat and dry cleaner that provides daily commercial laundry for NJ and NY hotels. The NJEDA approved a \$22,320 working capital loan and a \$2,480 forgivable loan. Proceeds will be used to supplement rent costs. The Company currently has four employees.
- 22) Quality Concrete of Perth Amboy, Inc. (PROD-00228243 & 00258582), located in Aberdeen Township, Monmouth County, was established in 2003 as a mobile concrete delivery company. The Company supplies ready-mix and on-site concrete to masons primarily located in the Monmouth, Middlesex, Union and Somerset counties. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable loan. Proceeds will be used to supplement inventory. The Company currently has five employees.

- 23) RAJPAN LLC DBA Countryside Foodmart (PROD-00224434 & 00258619), located in Lawrence Township, Mercer County, was established in 2014 as a convenience store. The NJEDA approved a \$19,800 working capital loan and a \$2,200 forgivable loan. Proceeds will be used to supplement lease, tax and utilities expenses. The Company currently has one employee.
- 24) Ramu II LLC DBA Polsky's Store (PROD-00228213 & 00258572), located in Harrison Town, Hudson County, was formed in 2009 as a local convenience store that also sells lottery tickets. The NJEDA approved a \$17,622 working capital loan and a \$1,958 forgivable loan. Proceeds will be used to supplement rent, payroll and utilities. The Company currently has one employee.
- 25) Robert Damiano, CPA, LLC (PROD-00228206 & 00258424), located in Bridgewater Township, Somerset County, was formed in 2008 as a full-service local accounting firm providing tax, accounting and consulting services to small and medium size businesses and individuals. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable loan. Proceeds will be used to supplement rent, payroll and utilities. The Company currently has one employee.
- 26) Setaara LLC DBA Setaara (PROD-00228456 & 00258530), located in Atlantic City, Atlantic County, was formed in 2017 as a startup French and Afghanistan fusion restaurant that promotes the freshest of ingredients and halal permissible foods. The NJEDA approved a \$45,000 working capital loan and a \$5,000 forgivable loan. Proceeds will be used to supplement rent and payroll costs. The Company currently has two employees.
- 27) SNS Fashion Accessories, Inc. (PROD-00224343 & 00264601), located in Passaic City, Passaic County, was established in 1997 as a wholesaler of scarves as well as dress, church, fashion and prom hats. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable loan. Proceeds will be used to supplement inventory, payroll and rent expenses. The Company currently has two employees.



Tim Sullivan, CEO

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