



MEMORANDUM

TO: Members of the Authority

FROM: Timothy Sullivan
Chief Executive Officer

DATE: July 14, 2021

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

Notice of Public Meeting

Roll Call

Approval of Previous Month's Minutes

CEO's Report to the Board

COVID19

Office of Economic Growth

Incentives

Bond Projects

Loans/Grants/Guarantees

Authority Matters

Real Estate

Board Memoranda

Public Comment

Adjournment

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

June 9, 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, 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; and staff.

Members of the Authority absent: Public Members Massiel Medina Ferrara and Aisha Glover.

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. Mr. Sullivan also advised that pursuant to the Internal Revenue Code of 1986, as amended, the meeting was a public hearing and comments were invited on any private activity bond project presented at the board meeting.

MINUTES OF AUTHORITY MEETING

The next item of business was the approval of the May 12, 2021 meeting minutes. A motion was made to approve the minutes by Mr. Wilton, seconded by Ms. Marley, and was approved by the 13 voting members present.

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

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

COVID-19 RESPONSE

ITEM: Small Business Emergency Assistance Loan Program (Phase 2) – Program Modification
REQUEST: To approve delegation to the CEO 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; to approve modifications to the Small Business Emergency Assistance Loan Program (Phase 2) – a pilot program, funded from the \$11 million USED A award, and to provide additional delegation of authority to staff to manage the program.

MOTION TO APPROVE: Ms. Bauer **SECOND:** Ms. Brennan **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 1

AUTHORITY MATTERS

ITEM: Request for Release of USED A Federal Interest in Revolving Loan Funds
REQUEST: To approve the Authority’s submission of a written request and required documentation to USED A to release its federal interest in five Revolving Loan Funds and delegated authority for the CEO to execute an agreement with the USED A and any required documentation.

MOTION TO APPROVE: Ms. Dragon **SECOND:** Ms. Marley **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 2

ITEM: Use of Economic Relief Act of 2020 Appropriation and Creation of Government Restricted Municipality Planning Grants

REQUEST: To approve the creation of the Government Restricted Municipality Planning Grants Program to make grant funding available that will maximize New Jersey municipalities’ growth potential by providing custom blueprints for a long-term strategic action plan; and to authorize \$750,000 in funding from the allocation as listed in the Economic Recovery Act of 2020.

MOTION TO APPROVE: Ms. Dragon **SECOND:** Ms. Brennan **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 3

ITEM: Government Restricted Municipality Planning Grant Implementation Funding, Phase II

REQUEST: To approve 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; to authorize \$2,250,000 in funding from the planning grant allocation as listed in the Economic Recovery Act of 2020; and delegated authority to staff to authorize program start date pending completion of Phase I.

MOTION TO APPROVE: Mr. Dumont **SECOND:** Ms. Bauer **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 4

OFFICE OF ECONOMIC GROWTH

PORT INFRASTRUCTURE

ITEM: Request for Modified Approval of the Authority's Letter of Intent (LOI) with PSEG in order to Continue Early Site Works beyond June 30, 2021

REQUEST: To approve the continuation of early site works for the New Jersey Wind Port (NJWP) project beyond June 30, 2021.

MOTION TO APPROVE: Mr. Shimko **SECOND:** Mr. Alagia **AYES: 12**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 5

Ms. Dragon abstained because the NJDEP has permits pending review before the department.

INCENTIVES

OFFSHORE WIND

ITEM: Approval of Amendments to Existing Offshore Wind Economic Development Tax Credit Rules

REQUEST: 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.

MOTION TO APPROVE: Ms. Bauer **SECOND:** Commissioner Caride **AYES: 13**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 6

FILM & DIGITAL MEDIA TAX CREDIT

ITEM: Survivalist the Film Inc

PROD-00257852

MAX AMOUNT OF TAX CREDITS: \$642,824.50

MOTION TO APPROVE: Mr. Wilton **SECOND:** Mr. Alagia **AYES: 13**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 7

ITEM: Universal Television LLC

PROD-00188181

MAX AMOUNT OF TAX CREDITS: \$12,911,280.32

MOTION TO APPROVE: Ms. Bauer **SECOND:** Commissioner Caride **AYES: 13**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 8

ITEM: Universal Content Productions LLC

PROD-00188274

MAX AMOUNT OF TAX CREDITS: \$3,205,416.90

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

RESOLUTION ATTACHED AND MARKED EXHIBIT: 9

ITEM: Apple Slice Productions, LLC PROD-00258281
MAX AMOUNT OF TAX CREDITS: \$3,742,405.50
MOTION TO APPROVE: Commissioner Angelo **SECOND:** Commissioner Caride **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 10

ITEM: Redo Askew, LLC PROD-00258300
MAX AMOUNT OF TAX CREDITS: \$2,532,789.12
MOTION TO APPROVE: Ms. Bauer **SECOND:** Commissioner Angelo **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 11

BOND PROJECT

COMBINATION PRELIMINARY AND FINAL BOND RESOLUTION

PROJECT: Chatham Day School, Inc. PROD. #00258838
LOCATION: Chatham Township, Morris County
PROCEEDS FOR: To reduce interest expense by refinancing existing conventional debt
FINANCING: \$9,000,000 Tax-Exempt Bond
MOTION TO APPROVE: Ms. Marley **SECOND:** Ms. Bauer **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 12
PUBLIC HEARING: Yes
PUBLIC COMMENT: None

LOANS, GRANTS, GUARANTEES

Hazardous Discharge Site Remediation Fund (HDSRF)

ITEM: Hazardous Discharge Site Remediation (HDSRF) Rule Amendments and Delegated Authority
REQUEST: To approve proposed rule amendments for the program and to 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); to increase EDA staff's delegated authority to approve grant applications under the HDSRF program from \$100,000 to \$500,000, and to provide EDA staff new delegated authority to approved loan applications up to \$500,000 under the HDSRF program.
MOTION TO APPROVE: Ms. Marley **SECOND:** Mr. Alagia **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 13

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. Bauer **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 14

PROJECT: Camden Redevelopment Agency
(BDA Knox Gelatin Meadows II)

PROD. #00257956

LOCATION: Camden City, Camden County

PROCEEDS FOR: Remedial Investigation

FINANCING: \$103,825.00

PROJECT: Camden Redevelopment Agency
(BDA Knox Gelatin Meadows II)

PROD. #00257957

LOCATION: Camden City, Camden County

PROCEEDS FOR: Remedial Action

FINANCING: \$1,136,612.00

PROJECT: Borough of Pennington

PROD. #00258423

(Pennington Borough Sanitary Landfill)

LOCATION: Pennington Borough, Mercer County

PROCEEDS FOR: Remedial Investigation

FINANCING: \$312,041.58

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. Bauer

AYES: 13

RESOLUTION ATTACHED AND MARKED EXHIBIT: 15

Residential:

PROJECT: Susie Hobbs

PROD. #00188307

LOCATION: Pennsville, Salem County

PROCEEDS FOR: Remediation, Upgrade and Closure

FINANCING: \$11,419.94

Commercial:

PROJECT: Fouad Nouri

PROD. #00228033

LOCATION: Paterson City, Passaic County

PROCEEDS FOR: Remediation, Upgrade and Closure

FINANCING: \$150,690.66

BOARD MEMORANDA

FYI ONLY: Credit Underwriting Projects Approved Under Delegated Authority, May 2021

PUBLIC COMMENT

There was no public comment.

There being no further business, on a motion by Mr. Quinn, and seconded by Mr. Dumont, the meeting was adjourned at 11:30am.

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: July 14, 2021

Re: July 2021 Board Meeting

As COVID-19 safety protections on businesses, places of work, and our daily activities have eased, the New Jersey Economic Development Authority (NJEDA) has shifted our focus from helping businesses and communities survive the pandemic to supporting the long-term success and resilience of New Jersey small businesses and non-profits.

As the summer progresses, it's encouraging to see foot traffic picking up at businesses in our local downtowns and communities, but many businesses are still in need of a boost to help them return to pre-pandemic levels of solvency. NJEDA staff continues to work diligently to review applications for grants of up to \$20,000 through Phase 4 of the Small Business Emergency Assistance Grant Program. To date, more than 20,000 businesses have been approved for Phase 4 funding totaling more than \$220 million. Since the launch of Phase 1 of the program, we have approved more than 64,000 grants worth a combined total of \$432 million.

Next week, businesses can begin pre-registration for Phase 2 of the Small Business Emergency Assistance Loan Program, which will provide eligible businesses loans up to \$100,000. Capitalized by a United States Economic Development Administration (USEDA) Coronavirus Aid, Relief, and Economic Security (CARES) Act appropriation, loans awarded through the Program require no payments for 24 months and zero interest for the ten-year term of the loan. Unlike past COVID-19 relief programs, this phase of the Emergency Assistance Loan Program is open to businesses that launched or grew during the pandemic; businesses that have executed a new lease, leased additional space, or acquired an owner-occupied commercial space of at least 500 square feet in 2021 will have exclusive, early access to the application starting August 3, 2021. All interested businesses must pre-register by July 30th in order to be eligible to apply for a loan.

We also continue to support New Jersey restaurants. Between now and July 18th, entities can apply for grants up to \$2 million via a new \$10 million round of funding for Sustain and Serve NJ, a widely-celebrated program that has to date provided more than \$14 million to 28 organizations to support the bulk purchase of more than 1.5 million meals from over 340 restaurants impacted by COVID-19.

On July 1, Governor Phil Murphy signed legislation appropriating funding for another industry recovering from severe impacts from the pandemic, child care providers. The Governor has committed \$100 million in American Rescue Plan funds to the Department of Community Affairs to support child care providers and the child care workforce through a number of initiatives. As part of the legislation, \$54.5 million will be allocated to the NJEDA to provide technical assistance to licensed or registered child care providers, and grants to child care providers for facilities improvements.

All of these programs support Governor Murphy's broader goal of a stronger, fairer pandemic recovery, embodied in New Jersey's Fiscal Year 2022 budget, which includes funds for multi-departmental economic growth initiatives that will boost economic recovery in New Jersey communities, provide access to capital for minority-owned businesses, and help government support sustainable economic growth. The new State budget appropriates funds for several NJEDA-administered programs, including \$25 million for the NJEDA's existing lending programs; \$1 million for NJ Ignite, and \$500,000 to double funding for the Small



Businesses Bonding Readiness Assistance program, which helps prepare small, minority, and women-owned business owners to obtain bonds and compete for state and federal government contracts. I am also delighted to announce that the approved budget includes \$10 million for the Black and Latino Seed Fund, which the NJEDA intends to create to drive capital to Black- and Latino-owned enterprises.

The budget also funds the \$100 million Main Street Recovery Finance Program, an Economic Recovery Act (ERA) program that will make grants, loans, and technical assistance available to support small and micro businesses in New Jersey. The Program will not only provide grants directly to businesses, but will also develop pilot programs over time that will provide loans to other micro business lenders like Community Development Financial Institutions (CDFIs) and Minority Depository Institutions (MDIs), increasing their lending capacity to support more New Jersey micro businesses. Last week, we released the draft rule proposal for the Main Street Recovery Finance Program, and members of the public are encouraged to review the preliminary rules and submit written feedback through an online form available on the Economic Recovery Act website. We have also conducted two virtual public listening sessions for public input on the draft rules this week, and a third session is taking place tomorrow, July 15th, at 10:00 a.m. Information on how to access the session is available on our website.

There are numerous indicators that that the worst of the COVID-19 health and economic crises has passed, and many reasons to be hopeful for a strong recovery. I am enormously proud of the role the NJEDA team has played in supporting New Jersey's businesses throughout this challenging time while juggling the professional and personal challenges of working from home. The team is beginning to transition back to the office, and I look forward to seeing everyone in-person, including, one day soon, members of this Board. Your wisdom and guidance have been especially valuable in addressing challenges throughout the pandemic, and we are just as grateful for your leadership now as we navigate the complex road to recovery.

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

COVID-19 RESPONSE PROGRAM



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: July 14, 2021

RE: NJEDA Phase 4 Small Business Emergency Grant Program—Additional Funding

Summary

The Members are asked to approve the delegation to the Chief Executive Officer to accept \$125 million in funds from the Coronavirus State Fiscal Recovery Fund (SFRF), enacted in the American Rescue Plan Act of 2021, as contained in pending legislation for the NJEDA Phase 4 Small Business Emergency Grant Program, and the execution of the corresponding MOU with the Department of Community Affairs (DCA). Additionally, the Members are asked to approve an increase of \$225 million to the delegated authority of the Chief Executive Officer to accept State or federal CRF or SFRF funds for the Program and to provide delegated authority to the CEO to increase the allowable percentage of funds dedicated to administering the program.

Background

On April 14, 2021 the members approved Phase 4 of the NJEDA Small Business Emergency Grant program and a sixth Amendment to the Memorandum of Understanding (MOU) with the New Jersey Department of the Treasury, whereby the NJEDA would accept \$85 million in funds from the Coronavirus Relief Fund including administrative costs of up to \$4,000,000 and agree to comply with federal requirements for the use of those funds, and delegation to the Chief Executive Officer to accept up to \$200 million in total, if additional funds became available. The April 14, 2021 approved memo, specifications and MOU Amendment (as executed) are attached for your reference.

Applications for Phase 4 of the grant program opened May 3, 2021 and closed on May 19, 2021 with 29,878 applications submitted. In response to the high number of pre-registrations, on May 7, 2021 Governor Murphy and Legislative leadership announced an additional \$235 million in funding for small business relief. Subsequently, the Legislature enacted a supplemental appropriation of State funds, which the Governor signed into law on June 22, 2021. The supplemental appropriation included two hundred million dollars for the Phase 4 program as follows: Microbusinesses: \$120 million, Bars and Restaurants: \$20 million, Child Care Facilities: \$10 million, Small Businesses: \$50 million. Based on existing delegated authority, the Chief Executive Officer accepted these funds.

More recently, Governor Murphy and Legislative leadership announced that the Phase 4 pre-registration and subsequent application process would reopen for those that had missed the initial deadlines. To support these additional applicants the Legislature has passed legislation, which is now pending the Governor's signature, for additional funding in the aggregate amount of \$135 million from SFRF as outlined below, with \$125 million for the Grant Program as follows:

- (1) \$55,000,000 to provide financial assistance to eligible microbusinesses
- (2) \$15,000,000 to provide financial assistance to eligible food and beverage establishments
- (3) \$45,000,000 to provide financial assistance to eligible businesses and nonprofit organizations
- (4) \$10,000,000 to provide financial assistance to eligible childcare providers

Additionally, the legislation will allow NJEDA to reallocate uncommitted funds between the various categories and the arts and culture program after a 5-day notice to the Joint Budget Oversight Committee.

The State has elected to have all SFRF funding go through DCA, a process similar to the one utilized in the aftermath of Superstorm Sandy, where DCA's Sandy Recovery Division has managed the majority of the federal funds used to assist the State in recovery efforts. The MOU between the Authority and DCA will be the same in substance to the MOU with the Department of Treasury (Treasury), but will have attached a "statement of assurances" listing the applicable federal requirements, and will require reporting through DCA's SIROMS system. Unless otherwise required by federal law, the Grant program specifications will remain the same. Per the Fiscal Year 2022 Appropriation Act, NJEDA is authorized to use up to 2.5% for administrative costs. Out of these additional \$125 million, staff proposes to use up to \$3 million for such costs. Under this MOU, the deadline for NJEDA to disburse funds and to expend administrative costs is December 31, 2024; however, staff anticipates that grant funds will be disbursed by December 30, 2021 and administrative funds will be used by May 31, 2022.

To date 18,279 applications totaling \$203,012,000 have been approved for the Phase 4 program. NJEDA has received 13,517 pre-registrations for the Phase 4 reopening and anticipate a similarly large number of full applications.

Recommendation

Approve (1) the delegation to the CEO to accept \$125 million in funds from the Coronavirus State Fiscal Recovery Fund for the NJEDA Phase 4 Small Business Emergency Grant Program, (2) the execution of the corresponding MOU with the Department of Community Affairs (DCA), (3) the increase to the delegation to the Chief Executive Officer to accept up to an additional \$225 million, if additional State, CRF, or SFRF funds became available for the Phase 4 NJEDA Small Business Emergency Grant program, and (4) delegated authority to the CEO to increase the allowable percentage of funds dedicated to administering the program.



Tim Sullivan, CEO

Attachments:

NJEDA Phase 4 Small Business Emergency Grant memo
Executed Sixth Amendment to Memorandum of Understanding (MOU) with the New Jersey Department of the Treasury



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: April 14, 2021

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

Summary

The Members are asked to approve:

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

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

Background

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

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

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

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

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

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

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

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

Coronavirus Relief Fund

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

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

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

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

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

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

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

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

Program Details of Phase 4

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

Eligibility

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

In Phase 4, staff recommends eligibility as follows:

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

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

Award Size

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

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

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

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

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

FTE Determination

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

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

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

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

Funding categories

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

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

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

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

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

Eligibility verification process

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Recommendation

Approval is requested for:

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

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



Tim Sullivan, CEO

Attachments

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

Exhibit B – Amendment to N.J. Treasury MOU

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WHEREAS, the Parties Amended the Original MOU by way of a Fifth Amendment (“Fifth Amendment”) on December 16, 2020 to extend the disbursement of an additional \$6,000,000 to December 24, 2020; and

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

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

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

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

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

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

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

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

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

Subject to the terms and conditions of this MOU, the Treasurer, as recipient of the CARES Funds shall make available to the NJEDA funds in the amount of at least Two Hundred Ninety-Four Million, Eight Hundred Thousand Dollars (\$294,800,000.00) (the “Grant Funds”) for the purpose of funding the Programs. The initial amount of Fifty-One Million Dollars (\$51,000,000.00) was provided upon execution of the Original MOU, an additional amount of

Fifteen Million, Three Hundred Thousand Dollars (\$15,300,000.00) was provided upon execution of a First Amendment, and an additional amount of Seventy-Three Million, Five Hundred Thousand Dollars (\$73,500,000.00) was provided upon execution of the Second Amendment. Fifty Million, Five Hundred Thousand Dollars (\$50,500,000.00) was provided upon execution of the Third Amendment, and NJEDA reallocated the unused amount of Three Million, Five Hundred Thousand Dollars (\$3,500,000.00) from Phase I of the NJ Small and Micro Business PPE Access Program upon full execution of the Third Amendment. Pursuant to the Fourth Amendment, the NJEDA also reallocated Twelve Million Dollars from Phase II of the NJ Small and Micro Business PPE Access Program (and may reallocate up to an additional Four Million Dollars). The additional \$85,000,000.00 shall be made available upon full execution of this Sixth Amendment. The Grant Funds shall be allocated as follows:

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

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

All Grant Funds must be disbursed by the NJEDA no later than December 1, 2021. NJEDA shall promptly return all unexpended Grant Funds. To ensure compliance with the CARES Act and U.S. Department of the Treasury requirements, all Grant Funds must be expended by grantees no later than December 31, 2021.

4. Except as otherwise provided in this Sixth Amendment, all of the terms, covenants and conditions of the Original MOU and any amendments and extensions thereto shall remain in full force and effect.

5. All references to the term “MOU” shall be deemed to refer to the Original MOU, as modified by any amendments and extensions thereto, including this Sixth Amendment.
6. The Sixth Amendment shall be effective as of the date of final execution by the parties (“the Effective Date”).

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

Treasurer of the State of New Jersey



By: Elizabeth Maher Muoio

Date: 5/14/2021

New Jersey Economic Development Authority



By: Tim Sullivan, Chief Executive Officer

Date: 4/22/2021

Attachments: Exhibit A- Phase Four Specifications

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

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

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

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

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

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

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

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



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: July 14, 2021

RE: Use of Coronavirus Relief Fund and Coronavirus State Fiscal Recovery Fund Appropriations and Creation of the New Jersey Community Stage Relief Grant Program

Summary

The Members are asked to approve:

1. Approval of a Memorandum of Understanding (MOU) with the New Jersey Department of the Treasury (NJ Treasury) whereby the NJEDA will accept \$7.5 million in funds from the Coronavirus Relief Fund (CRF) including administrative costs of up to \$357,000 and agree to comply with federal requirements for the use of those funds.
2. Delegation to the Chief Executive Officer to approve a Memorandum of Understanding (MOU) with the New Jersey Department of Community Affairs (NJ DCA) whereby the NJEDA will accept \$10 million in funds from the Coronavirus State Fiscal Recovery Fund (SFRF), enacted in the American Rescue Plan Act of 2021, including administrative costs of up to \$243,900 and agree to comply with federal requirements for the use of those funds.
3. Approve creation of the New Jersey Community Stage Relief Grant Program to make grant funding available to for-profit establishments that organize, promote, produce, manage, or host live events or performances by performing artists, and have experienced a revenue loss from Q2 2019 to Q2 2020;
4. Approval to apply administrative funds to issue one or more purchase orders to 22nd Century Technologies Inc. to hire temporary employees to administer any phase of this grant program, or other COVID-19 programs as needed, up to a maximum aggregate cost of \$600,000;
5. Delegation to Authority staff (Chief Executive Officer or Chief Community Development Officer) to accept other governmental (Federal, State or County) funding and/or unrestricted gifts or grants, or dedicate previously received unrestricted gifts or grants, to fund the New Jersey Community Stage Relief Grant Program;

6. Delegation to Authority staff (Chief Executive Officer, Chief Community Development Officer, Chief Legal and Strategic Affairs Officer) to impose additional requirements as may be required by law as a condition of accepting governmental (Federal, State or County) funding, provided that the requirements are consistent with the parameters of the program;
7. Delegation to Authority staff (Chief Community Development Officer, Executive Vice President-Special Projects, Managing Director-Community Development, Chief Economist) to approve individual applications to the New Jersey Community Stage Relief Fund in accordance with the terms set forth in this memo and the attached program specifications, and because the specifications are streamlined and will result in non-discretionary decisions, the delegated authority requested includes the authority to decline applications that do not meet eligibility requirements;
8. Delegation to Authority staff (Chief Legal & Strategic Affairs Officer, any Vice President, Director of Legal Affairs, Director of Business Operations) to issue final administrative decisions for appeals of non-discretionary declinations;
9. Delegation to the Chief Executive Officer to accept additional funding for program or administrative costs of up to \$15.5 million in funds from the Coronavirus Relief Fund (CRF) and accept additional funding for program or administrative costs of up to \$20.5 million in funds from the Coronavirus State Fiscal Recovery Fund (SFRF), enacted in the American Rescue Plan Act of 2021, and agree to comply with federal requirements for the use of those funds
10. Delegation to the Chief Executive Officer to (a) extend the deadline for disbursement and use of funds if the N.J. Treasury and/or CRF or SFRF deadlines are extended, (b) reallocate funds from or to other CRF- or SFRF-funded programs, and/or (c) return to N.J. Treasury any amounts remaining after all applications have been processed and all eligible applications have been funded, or as otherwise required by law or the MOU with N.J. Treasury.

Background

On March 9, 2020, Governor Phil Murphy issued Executive Order 103, declaring a State of Emergency and a Public Health Emergency to ramp up New Jersey's efforts to contain the spread of COVID-19. Since that time, a variety of containment measures were implemented, including restrictions on public gatherings and mandated closure of non-essential businesses. While the Public Health Emergency has ended, certain measures continue, and the State of Emergency remains. Additionally, our state's economy is still recovering from the significant adverse impact.

One of the industries most disrupted by COVID-19 has been the arts & culture industry, as COVID-19 restrictions prohibited or restricted public gatherings, resulting in a significant reduction in live events and performances, and reduced attendance at these events, resulting in a loss of revenue to establishments that rely on live event admission fees to support operation. This negatively impacted not only venues that host live performances or events, but also hurt establishments that organize, promote, produce, manage these live events, the performing artists

that perform at these events, as the real estate, food and beverage, apparel, building trades and tourism industries that support the arts and culture industry. Several establishments that were impacted by COVID-19 have immense recreational and cultural significance to New Jersey and its residents, and international recognition as important venues that provided early opportunities for some of the world's most famous performing artists.

Federal Funding

On April 8, 2021, Governor Murphy signed into law P.L. 2021, c.43 (the "Initial Law"), which allocates \$15 million of CRF funding to support arts and culture organizations impacted by COVID-19. Of that \$15 million, the Initial Law allocated \$7.5 million to the Authority to make grant funding available to for-profit arts and culture organizations. The remaining funding was allocated to the New Jersey Council on the Arts to provide funding to not-for-profit arts and culture organizations. Accordingly, the Members are requested to approve an MOU with NJ Treasury for the utilization of \$7.5 million in CRF funding to establish the New Jersey Community Stage Relief Grant Program.

More recently, the Legislature passed legislation, which is now pending the Governor's signature, to allocate \$10 million of SFRF as additional funding to the Authority (the "Subsequent Law") for the purposes of the Initial Law (that is, for for-profit arts and culture organizations). The State's SFRF funds are being administered by NJ DCA. Therefore, the Members are requested to delegated authority to the CEO to approve an MOU with NJ DCA for the utilization of \$10 million in SFRF funding to use for the New Jersey Community Stage Relief Grant Program. The MOU between the Authority and DCA will be the same in substance to the MOU with the Department of Treasury but will have attached a "statement of assurances" listing the applicable federal requirements and will require reporting through DCA's SIROMS system. Unless otherwise required by federal law, the program specifications will remain the same.

The Initial Law authorizes NJEDA to use up to 5% for administrative costs of the program related to Coronavirus Relief Funds, and the Subsequent Law will authorize 2.5% for administrative costs related to Coronavirus State Fiscal Recovery Fund. Thus, staff is seeking approval to include as part of the MOUs the use of up to \$357,000 and \$243,900, respectively, to fund administrative costs associated with administering the grant program. The program, as described below, will be memorialized in the two MOUs. The MOUs will also require NJEDA to follow the federal requirements applicable to each federal fund and will enable NJ Treasury or NJ DCA to claw back any funds the use of which are inconsistent with those federal requirements. Due to the earlier deadline of the CRF funding, the CRF MOU will require the NJEDA to disburse CRF funds and expend all administrative CRF funds by December 1, 2021. To ensure compliance with the CARES Act, as supplemented and amended by the Consolidated Appropriations Act, 2021, P.L. 116-260, and U.S. Department of the Treasury requirements, all grant funds from CRF funding must be expended by grantees no later than December 31, 2021. As required by the American Rescue Plan Act of 2021, P.L. 117-2, and the corresponding U.S. Department of the Treasury requirements, the SFRF MOU will require that grant funds from SFRF funding be expended by grantees and by EDA for administrative purposes no later than December 31, 2024.

New Jersey Community Stage Relief Fund– Eligibility & Eligibility Verification

The Initial Law requires that the Authority limit eligibility for these grants to for-profit establishments that host at least two regularly occurring live performances or events per week, charge admission fees for these live performances or events, and pay the performing artists based on a percentage of sales, a guarantee, or other mutually beneficial formal arrangement, or publicly sell tickets for which performers are paid based on a percentage of sales, a guarantee, or other mutually beneficial formal arrangement. Furthermore, the Initial Law requires the establishment to demonstrate to the Authority a 25 percent or greater operating revenue loss in Q2 2020 compared to the Q2 2019. Additionally, the Initial Law authorizes NJEDA to establish the size of awards and other program requirements.

Statutory Eligibility Requirements-Applicant Eligibility

To assist the Authority with assessing the eligibility of applicants under the program and help control what is expected to be significant application volume, applicants will be given the option to determine their eligibility through one of two specific criteria:

1. An eligible North American Industry Classification System (NAICS) code, based on its most recent business tax filing, to ensure the establishment could realistically host, organize, promote, produce, or manage live events with performing artists.
2. The ability to certify that fifty percent or more of the primary business activity-operating revenue is from organizing, promoting, producing, managing, or hosting at least two regularly occurring live performances per week.

All applicants must meet Eligibility Criteria 1 or Eligibility Criteria 2 in order to be eligible for the grant. All applicants must meet the Applicant Eligibility Criteria-Establishment Venue Capacity in addition to meeting either Eligibility Criteria 1 or Eligibility Criteria 2.

Applicant Eligibility Criteria 1 – NAICS Eligible Establishments

One way an applicant could be eligible is if they operate under a NAICS code that demonstrates that their primary business involves live events or performing arts. These codes are:

NAICS Code	Business Type
711410	Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures
711310	Promoters of Performing Arts, Sports, and Similar Events with Facilities
711320	Promoters of Performing Arts, Sports, and Similar Events without Facilities
711110	Theater Companies and Dinner Theaters
711130	Musical Groups and Artists

Establishments that have one of these NAICS codes would still need to meet the establishment venue capacity criteria as well as the other statutory requirements for eligibility (explained further below).

Applicant Eligibility Criteria 2 – Eligibility for Other Establishments Outside of Allowable NAICS Codes

If the applicant does not fall into one of the eligible NAICS codes as listed above, they may still be eligible for the program. The establishment must certify that their principal business operating revenue (50% or more) involves the organization, hosting, promotion, production, or management of live music or performances, with a brief narrative description making the case as to why the establishment's primary business meets that definition. The applicant will then be asked to provide yearly income and expense statements for 2019 or 2020 providing a breakdown substantiating the operating revenue numbers specific to the arts and culture establishment. These statements must identify revenue by source.

For this program, the Authority will accept management prepared financial reports, financial reports generated by an accounting system or software package or financial reports prepared by a third-party (CPA, accountant, or bookkeeper). The self-reported revenue statements must be certified by an owner, officer or an authorized representative of the organization. These statements can also be known as income statement, profit and loss (P&L) statement, or statements of revenue and expense

Applicants must show that at least 50% of their operating revenue is derived from ticket sales and/or admissions fees of live performances. Establishments that have verified that their primary business involves the organization, hosting, promotion, production, or management of live music or performances would still need to meet the establishment venue capacity criteria as well as other statutory requirements for eligibility (explained further below).

Program Eligibility Requirement-Establishment Venue Capacity

Applicants must certify venue capacity with the presentation of a Certificate of Occupancy issued by a New Jersey municipality, county or state agency. Establishments with a leased or owned venue capacity of greater than 2,500 are not eligible for the program. Applicants who do not own or have a lease on a performance space must certify that as of the date of application they do not own or lease a performance space. Applicants who utilize a leased performance venue must provide a Certificate of Occupancy the primary performance space.

Statutory Eligibility Requirements-Two Live Performances per week

The Initial Law requires the Authority to verify the establishment hosts two live performances per week. The Authority will collect documentation demonstrating the establishment has organized, promoted, produced, managed, or hosted at least two live performances or events per week across any three-month (quarterly) period beginning no later than January 1, 2019, through the date of application. Given that this program is intended to support establishments negatively impacted by the COVID-19 pandemic, this timeframe will ensure that funding is reserved and available to establishments that were operational and regularly hosting, producing, promoting, organizing or managing events immediately preceding the COVID-19 pandemic.

The types of documentation the Authority would expect to collect to evidence the live performances include live event calendars, public advertisements of live events, evidence of ticket sales for live events, ledgers, income statements, box office reports and other documents showing show dates, artists or events, ticket prices, and number of tickets sold, marketing or promotional materials, or any other documentation sufficiently demonstrating bi-weekly live events were supported over a three-month period.

Given the urgent need that exists for funding in order for these establishments to continue operations, particularly with many of these establishments being seasonal businesses that rely on business operations in the Summer to sustain operations, staff is currently exploring whether there is any means by which to automate review of financial or other information to determine eligibility.

Statutory Eligibility Requirements-Event Admissions Fees

The Initial Law directs the Authority to determine whether admission fees were charged for any events organized, promoted, produced, managed, or hosted, which the Authority will measure over any three-month (quarterly) period beginning no later than January 1, 2019, through the date of application. Again, the Authority will collect documentation as part of the application demonstrating the collection of admission fees for each event that is part of the three-month reporting period. This may include reports provided by a third-party ticket seller or payment processor, copies of receipts or tickets/ticket stubs sold at an event, in house administrative documentation, marketing materials or third-party media demonstrating a fee for admission was collected for live events reported during the three-month sample period.

Statutory Eligibility Requirements-Artist Payment for Events

The Initial Law directs the Authority to determine that the performing artists performing at live events over any three-month (quarterly) period beginning no later than January 1, 2019, through the date of application are paid through one of the following wage structures: payment based on a percentage of sales, a guaranteed payment, a contract or other mutually beneficial formal arrangement, or the sale of tickets for which performers are paid based on a percentage of ticket sales.

To evidence this, the Authority will require documentation proofs provided by the applicant for four different artists or their representatives evidencing a mutual agreement between the performing artist or the artists' agent, representative or other person or establishment responsible for arranging an artists' performance and the applying establishment or host venue that clearly demonstrates the performing artist was paid based on one of the wage structures identified above.

Staff expects to see a contract executed by both the performing artist and the applicant establishment/hosting venue that clearly stipulates the basis by which the performing artist is paid. However, recognizing the nature of how the industry works which is sometimes outside of formal contractual agreements, staff will accept other forms of documentation such as written or electronic copies of agreements such as copies of emails, electronic messages, and dated text messages if it is clear to the Authority that the compensation was mutually agreed upon, and the compensation is consistent with the statutory requirements.

Statutory Eligibility Requirements-25% or greater operating loss when comparing Q2 2019 and Q2 2020

The Authority must verify that the establishment has a 25 percent or greater operating revenue loss in Q2 2020 compared to the Q2 2019. Staff is currently exploring if there are ways to automate this review using information from the Division of Taxation; however, this is complicated by the fact that not every applicant may be a Corporate Business Tax filer. At a minimum, staff expects that to determine this, the Authority will first ask the applicant to self-report its operating revenue specific to the arts and culture establishment on a quarterly basis over calendar years 2019 and 2020. Any application whose self-reported revenue numbers do not meet the 25 percent requirement over the Q2 2020 to Q2 2019 comparison will not advance to the documentation review process on the basis that the statutory requirement for operating revenue loss was not met.

For applicants whose self-reported operating revenue numbers demonstrate a 25 percent or greater loss, the applicant will then be asked to provide 2019 and 2020 business income tax filings specific to the arts and culture establishment, so the Authority may compare the operating revenue reporting annually on the business filings to ensure consistency with the revenue reported on the management or third-party prepared financial statements.

For applicants whose self-reported operating revenue numbers demonstrate a 25 percent or greater loss but do not have 2019 and 2020 business income tax filings specific to the establishment for which the applicant is seeking grant funds, the applicant will then be asked to provide quarterly income and expense statements for all quarters of 2019 and 2020 providing a breakdown substantiating the operating revenue numbers specific to the arts and culture establishment. These statements must identify revenue by source. For this program, the Authority will accept management prepared financial reports, financial reports generated by an accounting system or software package or financial reports prepared by a third-party (CPA, accountant, or bookkeeper). The self-reported revenue statements must be certified by an owner, officer or an authorized representative of the organization. These statements can also be known as income statement, profit and loss (P&L) statement, or statements of revenue and expense.

Additional Program Requirements

Consistent with the approach taken across other grant programs the applicant must be in good standing with the New Jersey Department of Treasury-Division of Taxation, New Jersey Department of Labor and Workforce Development (LWD), and the New Jersey Division of Alcoholic Beverage Control (ABC) (if the applicant is regulated by the ABC) at the time of application to be eligible for the grant funding.

Additionally, as part of the grant application, the chief executive officer or equivalent officer of the applicant establishment must self- certify that applicant establishment:

- Was in operation on February 15, 2020 (consistent with the federal Paycheck Protection Program);

- Will make a best effort not to furlough or lay off any individuals from the time of application through six months after closing date of the grant. Arts and Culture Organizations that have already furloughed or laid off workers from the time of application must make a best-effort pledge to re-hire those workers as soon as possible. Any material breach of its best efforts certification may result in the NJEDA seeking repayment of the grant;
- Staff will take certain additional steps to ensure compliance with federal requirements. To comply with the CARES Act, the Authority must ensure a need for the funds arising from business interruption, and State recipients of funds must support their assessment of how businesses receiving assistance were affected by the negative economic impacts of the pandemic and how the aid provided responds to these impacts. Thus, applicants must acknowledge and agree that the funds must be used to replace revenue lost as a result of a business interruption caused by COVID-19 between March 1, 2020, and the date of the grant agreement; and
- 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 insurance, Small Business Administration loans and grants, forgivable portions of Payroll Protection loans, and Economic Injury Disaster grants. Staff will use this information to ensure that the New Jersey Community Stage Relief Fund grant (funded with federal assistance) is not used for the same purpose as other COVID-19 assistance, i.e., creating an impermissible duplication of benefit.
- If a venue, must be physically location in New Jersey.

Grant Calculations

Awards will be calculated based on 30% of revenue loss up to a maximum grant award of \$300,000, net of any duplication of benefits or Federal award requirement reduction.

Grant calculation:

- Grants amounts will be calculated as 30% of the decline in operating revenue in 2020 versus 2019.
- The total grant amount cannot exceed the establishment's unmet need based on duplication of benefits analysis. The maximum grant request amount is \$300,000 and the minimum amount is \$10,000 contingent on the total unmet need being at least \$10,000. Any total unmet need below \$10,000 will be funded up to the level of that unmet need.

Application Intake & Review

Applications for this program will be accepted on a first-come, first-served basis, based on the date and time in which the Authority receives the application. Only applications that are fully complete will be considered for funding. Applicants will be given five (5) business days for an opportunity to correct or preserve their application by providing missing documentation. Applicants who fail to provide the requested application information will be rejected on the basis of insufficient or incomplete documentation.

Given the volume of applications the Authority expects to receive, only applicants that provide a NAICS code as listed in Eligibility Criteria 1 and self-report revenue figures showing at least a 25 percent operating revenue loss over the Q2 2020 to Q2 2019 comparison *or* can demonstrate that fifty percent or more of the primary business activity-operating income is from organizing, promoting, producing, managing, or hosting at least two regularly occurring live performances per week and self-report revenue figures showing at least a 25 percent operating revenue loss over the Q2 2020 to Q2 2019 comparison will advance to a manual review of documentation by Authority staff. Applicants with greater than 2,500 capacity will not proceed.

The Authority will implement additional automation and interactivity such that businesses are immediately alerted if they enter information that may indicate ineligibility or trigger a manual review, giving them the opportunity to confirm that their responses are correct or choose not to proceed if they are ineligible.

Furthermore, thirty-three percent (33%) of the \$16.67 million available (\$7.14m from CRF and \$9.52 from ARP) as grant funding will be directed to support establishments that have a commercial business address in a census tract that was eligible to be selected as a New Jersey Opportunity Zone (i.e., a New Market Tax Credit census tract). Because this is a reserve to be used for the applications received, any amount of the 33 percent Opportunity Zone eligible reserve that remains after processing all applications from establishments in Opportunity Zone eligible census tracts would be used for any other eligible applicant under the program.

There are 715 census tracts that were eligible to be Opportunity Zones in New Jersey. These areas were among the ones most significantly affected by the COVID-19 pandemic and the concomitant adverse impact on small businesses and our State's economy. As was done in the Authority's prior COVID-19 grant programs, setting aside a portion of available funding under New Jersey Community Stage Relief Fund to support establishments in these census tracts further reinforces the State's commitment to helping to ensure all Opportunity Zone eligible tracts in New Jersey receive opportunities for investment that are equitable and inclusive.

Staffing

Given the amount of available funding for the proposed New Jersey Community Stage Relief Grant Program, the volume of establishments the Authority anticipates will apply, the manual nature of review associated with each application, and the urgency in which the funding is needed by these establishments, the Authority does not have sufficient staff to administer the program. Accordingly, staff seeks approval to issue one or more purchase orders to 22nd Century Technologies Inc. ("22nd Century") to hire temporary employees to scale up operations and administer this grant program, or other COVID-19 program as needed, up to a maximum aggregate cost of \$600,000. This funding is included in the administrative funds under each MOU and will be charged under each MOU based on the use of funds under each MOU.

The Authority is able to contract directly with 22nd Century because 22nd Century has a State contract procured by the Division of Purchase and Property (within the Department of the Treasury). In accordance with the applicable statute (N.J.S.A. 52:34-6.2) and the New Jersey Administrative Code (N.J.A.C. 17:12-1A.3), the State awarded a Blanket P.O. to 22nd Century based on a National Cooperative Agreement procured and awarded by NASPO ValuePoint, the cooperative contracting arm of the National Association of State Procurement Officials (NASPO), for the provision of Temporary Employment Services. Information regarding the

NASPO Master Agreement for the provision of Temporary Employment Services (Temporary Employment Services 50-000-15-00058 AA) may be found on the NASPO website at: <http://naspo.valuepoint.org/#/contract-details/83/overview/general>. That contract offers the Authority the ability to hire temporary employees expeditiously, on acceptable terms and for the best value. The Authority has successfully utilized the 22nd Century contract to hire temporary employees to help administer several of its other COVID programs, including the Small Business Emergency Assistance Grant Program, the PPE Program and the Sustain & Serve New Jersey Program.

These positions will be publicized across numerous employment sites, using social media and through a variety of establishments including the African American Chamber of Commerce of NJ, the Statewide Hispanic Chamber of Commerce of NJ, and the NJ Veterans Chamber of Commerce. Postings will be verified by program staff.

Additional Funding

Staff is also requesting delegated authority for the Chief Executive Officer and/or Chief Community Development Officer to accept other governmental (Federal, State or County) funding and/or unrestricted gifts or grants, or dedicate previously received unrestricted gifts or grants, to fund the New Jersey Community Stage Relief Grant Program and for the Chief Executive Officer to accept CRF, SFRF or other governmental (Federal, State or County) funding for administrative or other program related costs.

Recommendation

The Members are asked to approve:

1. Approval of a Memorandum of Understanding (MOU) with the New Jersey Department of the Treasury (NJ Treasury) whereby the NJEDA will accept \$7.5 million in funds from the Coronavirus Relief Fund (CRF) including administrative costs of up to \$357,000 and agree to comply with federal requirements for the use of those funds.
2. Delegation to the Chief Executive Officer to approve a Memorandum of Understanding (MOU) with the New Jersey Department of Community Affairs (NJ DCA) whereby the NJEDA will accept \$10 million in funds from the Coronavirus State Fiscal Recovery Fund (SFRF), enacted in the American Rescue Plan Act of 2021, including administrative costs of up to \$243,900 and agree to comply with federal requirements for the use of those funds
3. Approve creation of the New Jersey Community Stage Relief Grant Program to make grant funding available to for-profit establishments that organize, promote, produce, manage, or host live events or performances by performing artists, and have experienced a revenue loss from Q2 2019 to Q2 2020;
4. Approval to apply administrative funds to issue one or more purchase orders to 22nd Century Technologies Inc. to hire temporary employees to administer any phase of this grant program, up to a maximum aggregate cost of \$600,000;

5. Delegation to Authority staff (Chief Executive Officer or Chief Community Development Officer) to accept other governmental (Federal, State or County) funding and/or unrestricted gifts or grants, or dedicate previously received unrestricted gifts or grants, to fund the New Jersey Community Stage Relief Grant Program;
6. Delegation to Authority staff (Chief Executive Officer, Chief Community Development Officer, Chief Legal and Strategic Affairs Officer) to impose additional requirements as may be required by law as a condition of accepting governmental (Federal, State or County) funding, provided that the requirements are consistent with the parameters of the program;
7. Delegation to Authority staff (Chief Community Development Officer, Executive Vice President-Special Projects, Managing Director-Community Development, Chief Economist) to approve individual applications to the New Jersey Community Stage Relief Fund in accordance with the terms set forth in this memo and the attached program specifications, and because the specifications are streamlined and will result in non-discretionary decisions, the delegated authority requested includes the authority to decline applications that do not meet eligibility requirements;
8. Delegation to Authority staff (Chief Legal & Strategic Affairs Officer, any Vice President, Director of Legal Affairs, Director of Business Operations) to issue final administrative decisions for appeals of non-discretionary declinations; and
9. Delegation to the Chief Executive Officer to accept additional funding for program or administrative costs of up to \$15.5 million in funds from the Coronavirus Relief Fund (CRF) and accept additional funding for program or administrative costs of up to \$20.5 million in funds from the Coronavirus State Fiscal Recovery Fund (SFRF), enacted in the American Rescue Plan Act of 2021, and agree to comply with federal requirements for the use of those funds
10. Delegation to the Chief Executive Officer to (a) extend the deadline for disbursement and use of funds if the N.J. Treasury and/or CRF or SFRF deadlines are extended, (b) reallocate funds from or to other CRF- or SFRF-funded programs, and/or (c) return to N.J. Treasury any amounts remaining after all applications have been processed and all eligible applications have been funded, or as otherwise required by law or the MOU with N.J. Treasury.



Tim Sullivan
Chief

Executive

Officer

Attachments

Exhibit A – New Jersey Community Stage Relief Fund Specifications

Exhibit B – MOU with Treasury

EXHIBIT A

New Jersey Community Stages Relief Fund
Proposed Specifications
July 2021

Total Funding Amount	\$17,500,000
Administrating Agency	EDA
Program Purpose & Overview	<p>The New Jersey Community Stage Relief Fund will make grant funding available to for-profit establishments that organize, promote, produce, manage, or host live events or performances by performing artists, and have experienced a revenue loss from Q2 2019 to Q2 2020.</p> <p>On April 8, 2021, Governor Murphy signed into law P.L. 2021, c.43 (the "statute"), which allocates \$15 million of CARES Act funding to support arts and culture organizations impacted by COVID-19. Of that \$15 million, the statute allocated \$7.5 million to the Authority to make grant funding available to for-profit arts and culture organizations. The remaining funding was allocated to the New Jersey Council on the Arts to provide funding to not-for-profit arts and culture organizations.</p> <p>The statute requires that the Authority limit eligibility for these grants to for-profit establishments that host at least two regularly occurring live performances or events per week, charge admission fees for these live performances or events, and pays the performing artists based on a percentage of sales, a guarantee, or other mutually beneficial formal arrangement, or publicly sells tickets for which performers are paid based on a percentage of sales, a guarantee, or other mutually beneficial formal arrangement. Furthermore, the statute requires the establishment to demonstrate to the Authority a 25 percent or greater operating revenue loss in Q2 2020 compared to the Q2 2019.</p> <p>Governor Murphy signed into law an allocation of \$10 million of SFRF as additional funding to the Authority") for the purposes of additional program funding to for-profit arts and culture organizations.</p>

EXHIBIT A

New Jersey Community Stages Relief Fund
Proposed Specifications
July 2021

Minimum Eligibility Requirements	<ul style="list-style-type: none"> Applicant must be a for profit New Jersey Arts and Culture Establishment Applicant must be eligible by designated NAICS code <table border="1" data-bbox="727 447 1227 798"> <thead> <tr> <th>NAICS Code</th><th>Business Type</th></tr> </thead> <tbody> <tr> <td>711410</td><td>Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures</td></tr> <tr> <td>711310</td><td>Promoters of Performing Arts, Sports, and Similar Events with Facilities</td></tr> <tr> <td>711320</td><td>Promoters of Performing Arts, Sports, and Similar Events without Facilities</td></tr> <tr> <td>711110</td><td>Theater Companies and Dinner Theaters</td></tr> <tr> <td>711130</td><td>Musical Groups and Artists</td></tr> </tbody> </table> Certification that principal business operating revenue (50% or more) involves the organization, hosting, promotion, production, or management of live music or performances with a brief narrative description making the case as to why the establishment's primary business meets that definition. <p>Applicant will then be asked to provide yearly income and expense statements for 2019 or 2020 providing a breakdown substantiating the operating revenue numbers specific to the arts and culture establishment. These statements must identify revenue by source.</p> <p>The Authority will accept management prepared financial reports, financial reports generated by an accounting system or software package or financial reports prepared by a third-party (CPA, accountant, or bookkeeper). The self-reported revenue statements must be certified by an owner, officer or an authorized representative of the organization. These statements can also be known as income statement, profit and loss (P&L) statement, or statements of revenue and expense</p> <p>Applicants must show that at least 50% of their operating revenue is derived from ticket sales and/or admissions fees of live performances</p> Applicants who lease or own venues must have a capacity of 2,500 or less Applicants who own or lease venues must provide a New Jersey Certificate of Occupancy to verify venue size 	NAICS Code	Business Type	711410	Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures	711310	Promoters of Performing Arts, Sports, and Similar Events with Facilities	711320	Promoters of Performing Arts, Sports, and Similar Events without Facilities	711110	Theater Companies and Dinner Theaters	711130	Musical Groups and Artists
NAICS Code	Business Type												
711410	Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures												
711310	Promoters of Performing Arts, Sports, and Similar Events with Facilities												
711320	Promoters of Performing Arts, Sports, and Similar Events without Facilities												
711110	Theater Companies and Dinner Theaters												
711130	Musical Groups and Artists												

EXHIBIT A

**New Jersey Community Stages Relief Fund
Proposed Specifications
July 2021**

Minimum Eligibility Requirements	<ul style="list-style-type: none"> • Applicant venue can not have capacity greater than 2,000 persons • Applicant must have experienced 25% revenue loss based on 2Q 2020 compared to 2Q 2019 • Applicant must demonstrate the establishment has organized, promoted, produced, managed, or hosted at least two live performances or events per week across any three-month (quarterly) period beginning no later than January 1, 2019, through the date of application. • Applicant must show, over any 3 month period beginning on 1-1-19 up to the date of the grant application, that admission fees were charged for events organized, promoted, produced, managed, or hosted • Applicant must show the performing artists performing at live events over the three-month sample period are paid through one of the following wage structures: payment based on a percentage of sales, a guaranteed payment, a contract or other mutually beneficial formal arrangement, or the sale of tickets for which performers are paid based on a percentage of ticket sales. Documentation proofs from four different artists or their representatives will be requested to evidence a mutual agreement between the performing artist or the artists' agent, representative or other person or establishment responsible for arranging an artists' performance and the applying establishment or host venue that clearly demonstrates the performing artist was paid based on one of the wage structures identified above • If a venue, must be physically location in New Jersey.
---	---

EXHIBIT A

**New Jersey Community Stages Relief Fund
Proposed Specifications
July 2021**

<p>Eligibility Documentation Requirements</p>	<ul style="list-style-type: none"> • Proof of Revenue Loss Documentation may include but are not limited to: <ul style="list-style-type: none"> -Record of New Jersey Income Tax Payment for 2019-2020 -Quarterly management generated Profit and Loss statements for Q 1-4 2019 and Q 1-4 2020 • Proof of 2 Live Performances on Average for one quarter may include but are not limited to" <ul style="list-style-type: none"> -Contracts -Live Event Calendars -Adverts -Ticket System Reports -Payment Processor Reports -Receipt Copies -Dated Marketing Materials -Media Reports -Administrative Documentation -Ticket Copies -Any other documentation sufficiently demonstrating bi-weekly live events were supported • Proof of Event Admissions Fees may include but are not limited to: <ul style="list-style-type: none"> -Ticket System Reports -Payment Processor Reports -Receipt Copies -Dated Marketing Materials -Media Reports -Administrative Documentation -Ticket Copies -Ticket Stubs -Box Office Reports • Proof of Artist Payment may include but are not limited to: <ul style="list-style-type: none"> -Contracts -Signed Agreements -Email Agreements -Dated Text message screenshots
--	--

EXHIBIT A

**New Jersey Community Stages Relief Fund
Proposed Specifications
July 2021**

EXHIBIT A

**New Jersey Community Stages Relief Fund
Proposed Specifications
July 2021**

Program Requirements	<ul style="list-style-type: none">• Active NJ BRC• Must have physical location in New Jersey• Must be a for-profit business• In good standing with:<ul style="list-style-type: none">-NJ Department of Treasury-Div. of Taxation-NJ Department of Labor-NJ Alcohol Beverage Control (if applicable)-Federal System for Awards Management (SAM)• In operation on February 15, 2020• Must certify best effort not to furlough or lay off any individuals from the time of application through six months after the end of the declared state of emergency. Arts and Culture Organizations that have already furloughed or laid off workers from the time of application must make a best-effort pledge to re-hire those workers as soon as possible. Any material breach of its best efforts certification may result in the NJEDA seeking repayment of the grant;• Must show a need for the funds arising from business interruption, applicants must acknowledge and agree that the funds must be used to replace revenue lost as a result of a business interruption caused by COVID-19 between March 1, 2020, and the date of the grant agreement as per Federal CARES Act requirement• Must fill out an affidavit identifying all funding sources related to COVID-19, including insurance, Small Business Administration loans and grants, forgivable portions of Payroll Protection loans, and Economic Injury Disaster grants. Staff will use this information to ensure that the New Jersey Community Stage Relief Fund grant (funded with federal assistance) is not used for the same purpose, i.e., creating an impermissible duplication of benefit in order to comply with duplication of benefits provisions within the Stafford Act
-----------------------------	---

EXHIBIT A

**New Jersey Community Stages Relief Fund
Proposed Specifications
July 2021**

<p>Award Processing</p>	<ul style="list-style-type: none"> • Funding requests will be reviewed on a first-come-first-served basis. • Only applications that are fully complete will be considered for funding. • Applicants will be given five (5) business days for an opportunity to correct or preserve their application by providing additional documentation. • Applicants who have failed to provide the requested application information will be denied on the basis of insufficient or incomplete documentation. • Individual grant amounts may be prorated relative to requests if demand exceeds available funding. • Delegation to Authority staff (Chief Legal & Strategic Affairs Officer, any Vice President, Director of Legal Affairs, Director of Business Operations) to issue final administrative decisions for appeals of non-discretionary declinations • Delegation to Authority staff (Chief Community Development Officer, Executive Vice President-Special Projects, Managing Director-Community Development ,Chief Economist) to approve individual applications and because the specifications are streamlined and will result in non-discretionary decisions, the delegated authority requested includes the authority to decline applications that do not meet eligibility requirements • Thirty-three percent (33%) grant funding will be directed to support establishments that have a commercial business address in a census tract that was eligible to be selected as a New Jersey Opportunity Zone (i.e., a New Market Tax Credit census tract). <ul style="list-style-type: none"> - Any amount of the 33 percent Opportunity Zone eligible reserve that remains after processing all applications from establishments in Opportunity Zone eligible census tracts would be used for any other eligible applicant under the program.
--------------------------------	---

EXHIBIT A

**New Jersey Community Stages Relief Fund
Proposed Specifications
July 2021**

Awards	<p>Awards will be calculated based on 30% of revenue loss up to a maximum grant award of \$300,000, net of any duplication of benefits or Federal award requirement reduction</p> <p>The maximum grant award amount is \$300,000</p>
---------------	--

EXHIBIT A

**New Jersey Community Stages Relief Fund
Proposed Specifications
July 2021**

Exhibit B

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE TREASURER OF THE STATE OF NEW JERSEY
AND
THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
FOR
NEW JERSEY COMMUNITY STAGE RELIEF GRANT PROGRAM**

THIS **MEMORANDUM OF UNDERSTANDING** (“MOU”) made by and between the TREASURER (“Treasurer”) of the New Jersey Department of Treasury (“Treasury”) and the NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY (the “AUTHORITY”), an instrumentality of the State of New Jersey (the “State”). The AUTHORITY and the Treasurer may sometimes hereinafter be collectively referred to as the “Parties” and individually as a “Party”.

PREAMBLES

WHEREAS, due to the increase in the number of novel coronavirus (“COVID-19”) cases in New Jersey, the surrounding region and across the globe, the Governor of the State of New Jersey issued Executive Order No. 103 declaring a public health emergency and a state of emergency in the State of New Jersey (the “State”) on March 9, 2020, allowing for certain executive actions to respond to the increasing amount of COVID-19 cases in the State; and

WHEREAS, on March 11, 2020, the World Health Organization declared the COVID-19 outbreak a global pandemic (the “COVID-19 Pandemic”) and on March 13, 2020, the President of the United States declared a national state of emergency; and

WHEREAS, in response to the COVID-19 Pandemic, Congress enacted the “Coronavirus Aid, Relief and Economic Security Act,” P.L. 116-136, codified at 134 Stat. 281 (the “CARES Act”); and

WHEREAS, the CARES Act provides, among other things, some fiscal relief to the states; and

WHEREAS, pursuant to the Fiscal Year 2021 Appropriations Act, L. 2020, c. 97, monies received from the federal government pursuant to a federal economic stimulus bill are appropriated to the applicable State entity to be spent on the purposes authorized by the federal economic stimulus bill; and

WHEREAS, the State received \$2.4 billion (the “CARES Funds”) from the federal government under the CARES Act, which monies must be used in conformance with the requirements of the CARES Act; and

WHEREAS, the arts and culture industry have been greatly disrupted by the COVID-19 health emergency as COVID-19 restrictions have prohibited or restricted public gatherings, resulting in a significant reduction in live events and performances, and reduced attendance at these events, resulting in a loss of revenue to establishments that rely on live event admission fees to support operation; and

Exhibit B

WHEREAS, on April 8, 2021, Governor Murphy signed P.L.2021, c. 43 into law, allocating \$15 million of CARES Act funding to support arts and culture organizations impacted by COVID-19, and of that \$15 million, \$7.5 million was allocated to the Authority to make grant funding available to for-profit arts and culture organizations; and

WHEREAS, to aid the arts and culture industry, the Authority will establish the New Jersey Community Stage Relief Grant Program (the “Program”) in which the Authority will provide grants to qualified for-profit establishments who host at least two regularly occurring live performances or events per week, charge admission for such events, and pay the performing artists, as further described in Exhibit A and fully incorporated herein; and

WHEREAS, pursuant to this MOU, the Parties wish to set forth their understandings with respect to providing funding to the Program; and

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

NOW, THEREFORE, the Treasurer and the Department agree as follows:

Section 1. Grant Award.

Subject to the terms and conditions of this MOU, the Treasurer, as recipient of the CARES Funds shall make available to the Authority funds in the amount of \$7,500,000 (the “Grant Funds”) for the purpose of funding the Program and its administrative costs. The entire amount of the Grant Funds shall be provided upon full execution of this MOU and submission by the Department of any requisition or other document required by the Treasurer.

Section 2. Terms of the Grant Award.

The Authority will use Grant Funds for grants to eligible applications for the Program and up to \$357,000 in administrative costs incurred in connection with the Authority’s implementation of the Program, as set forth in Exhibit A. Any material change to the use of Grant Funds must be approved by the Treasurer prior to implementation of any such changes, except to the extent such changes are required to conform to federal requirements or conditions of funding.

Section 3. Responsibilities of the Authority

3.1 Prior to December 1, 2021, the Authority shall provide a report to the Treasurer demonstrating actual or committed disbursement of Grant Funds and the need for and commitment to expend the Grant Funds by no later than December 1, 2021. To ensure compliance with the CARES Act and U.S. Department of the Treasury requirements, all Grant Funds must be encumbered by the Department no later than December 1, 2021.

3.2 In the event that the actual or committed disbursement of funds as stated in the report provided pursuant to Section 3.1 is less than the amount of the Grant Funds, the Authority shall promptly remit to the Treasurer the balance of the remaining Grant Funds.

3.3 The Authority shall comply with the CARES Act, as amended by the Coronavirus Relief and Response Supplemental Appropriations Act, 2021 (constituting Division M of the Consolidated

Exhibit B

Appropriations Act, 2021, P.L. 116-260), including, but not limited to, the U.S. Department of the Treasury Guidance and Frequently Asked Questions, any U.S. Department of the Treasury requirements, and the U.S. Department of the Treasury Office of the Inspector General Frequently Asked Questions, as they may be updated from time to time, in expending the Grant Funds for the Program.

3.4 The Authority shall be responsible for distributing the Grant Funds in accordance with all applicable State and federal laws and regulations. It shall be the Authority's responsibility to require that all of its grantees adhere to all applicable State and federal laws and regulations. The Authority shall conduct all necessary monitoring for such compliance. To the extent that the U.S. Department of the Treasury audits the use of the Grant Funds, the Authority shall respond to such audit(s). The Authority shall also be responsible for any recoupment of the Grant Funds that the U.S. Department of the Treasury may require.

3.5 The monitor for the Authority for this MOU is the Chief Legal and Strategic Affairs Officer, who shall be responsible for overseeing the successful performance and completion of the Authority's obligations as provided in this MOU. The Authority shall submit a report of actual and committed funds by December 15, 2021, as described in Section 3.1. The Authority shall be required to obtain any necessary information from recipients of the Grant Funds to indicate compliance by recipients with Program and federal requirements, if necessary.

3.6 The Authority will provide the New Jersey Office of Emergency Management ("NJOEM") documentation in its NJEMgrants.org grant tracking system showing a full itemized accounting of 100% of the eligible costs. The Authority is responsible for tracking and verification of all costs.

3.7 The Authority is responsible for ensuring the Grant Funds do not constitute a Duplication of Benefits as defined by the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. The Authority shall establish appropriate policies and procedures to prevent Duplication of Benefits and shall cooperate with other State departments and agencies to prevent and rectify Duplication of Benefits, which may include, but is not limited to, recoupment of Grant Funds.

Section 4. General Provisions

4.1 Termination and Amendments. This MOU may be modified or extended only by prior written agreement by the Parties. This MOU may be terminated by either the Authority or the Treasurer upon thirty (30) days prior written notice to the other Party.

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

4.3 There are no third-party beneficiaries of this MOU.

4.4 This MOU shall be administered consistent with N.J.S.A. 52:14-1 et seq.

4.5 The Effective Date of this MOU shall be the later of the date executed by the Parties below. The term of this MOU shall be for a period of two (2) years from the Effective Date unless extended by agreement of the Parties.

Exhibit B

4.6 The Treasurer and the Authority shall retain all the powers, obligations and immunities provided by law.

4.7 The Parties acknowledge that the successful completion of each Party's duties hereunder will require cooperation between the Parties. The Parties agree to work cooperatively to achieve the goals of this MOU.

4.8 The recitals appearing before Section 1 are made part of this MOU and are specifically incorporated herein by reference.

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

Treasurer of the State of New Jersey

_____ Date: _____
By: Elizabeth Maher Muoio

New Jersey Economic Development Authority

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

Attachment: Exhibit A- NJ Community Stage Relief Grant Program Specifications

OFFICE OF ECONOMIC GROWTH

ECONOMIC GROWTH



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: July 14, 2021

SUBJECT: Special Adopted New Rules and Concurrent Proposed New Rules – New Jersey PPE Manufacturing Tax Credit Program (N.J.A.C. 19:31-24)

Request

The Members are asked to approve:

1. The creation of the New Jersey Personal Protective Equipment Manufacturing Tax Credit (PMTTC) Program, a tax incentive program authorized by the New Jersey Economic Recovery Act of 2020 (Sections 106 and 107 of P.L. 2020, c. 156; the “Act”), to encourage the development of PPE manufacturing and the creation of related jobs in the state; and
2. The attached special adopted new rules and concurrent proposed new rules for the PMTTC 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.

New Jersey Economic Recovery Act

On January 7, 2021, Governor Phil Murphy signed the New Jersey Economic Recovery Act of 2020 (ERA) into law.

The ERA presents a strong recovery and reform package that will address the ongoing economic impacts of the COVID-19 pandemic and position New Jersey to build a stronger and fairer economy that invests in innovation, in our communities, and in our small businesses the right way, with the protections and oversight applicants deserve. Tax incentives and other investment tools are critical to economic development, and when used correctly they can drive transformative change that uplifts communities and creates new opportunities for everyone.

The ERA includes 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; and
- Additional tax credits for film and digital media.

The program being presented for the Members' approval in this memorandum is the New Jersey PPE Manufacturing Tax Credit Program – one of the 15+ programs under the ERA. The PMTC Program is an incentive program designed to encourage PPE manufacturing here in New Jersey.

This memorandum provides a summary about the PMTC Program including general features of the program, eligibility criteria, specific program requirements, application process and the evaluation and approval process. The specific details – and what will be promulgated and will govern the program – are included in the attached rules proposed for Board approval.

Program Purpose & General Description

The primary purpose of the PMTC Program is to encourage PPE manufacturing in New Jersey, which will help create or retain manufacturing jobs, improve the public health and increase economic benefits to the State by providing more local sources of PPE supply.

The Program provides tax credits to projects that have invested in the development of PPE manufacturing within the state in tax years 2020-2022. The tax credits are based on the number of new or retained jobs involved in or supporting the manufacture of PPE in a Qualified Facility. To be eligible for the Program, a business must meet investment and hiring thresholds and the facility itself must meet one of five criteria based on location or use to be considered a Qualified Facility.

The PMTC Program awards tax credits for each Qualifying Full-Time Job involved in the manufacture of PPE (\$10,000 per job). It also makes additional credits available for Qualifying Full-Time Jobs if the applicant meets certain other criteria that support the State's broader economic goals (\$1,000 or \$1,500 per job depending on the criterion). The total available credits for a taxpayer's project are limited to \$500,000 for the applicable tax year or privilege period for which the taxpayer applies. The total available tax credits available under the PMTC Program is \$10 million per year.

While the program awards tax credits for tax years 2020, 2021, and 2022, applicants will have an additional 18 months following the end of their selected tax year to apply for the Program. All applications must be submitted on or before June 30, 2024.

Key Defined Terms

Certain important terms appear frequently in this memorandum; their definitions and applications are summarized below.

Commitment Period: The statute requires that a business receiving tax credits under the PMTC Program must commit to retaining the jobs on which the credits are based for a period of five year or face potential recapture of the benefits. The commitment period begins on the date that the tax credits are issued by Treasury.

Completion Date of Capital Investment: Only projects that have completed their capital investment process are eligible for the PMTC program. The completion date of capital investment is defined as the date of a certificate of occupancy or other indication of completion. It establishes the tax year for which awarded credits will apply.

Personal protective equipment (PPE; defined by statute): The statutory definition of PPE includes “coveralls, face shields, gloves, gowns, masks, respirators, [and] safeguard equipment.” The statute also authorizes the Authority to designate as PPE “other equipment designed to protect the wearer from the spread of infection or illness as may be modified from time to time by the board of the authority.” Accordingly, Staff is requesting Members’ approval to add head coverings and footwear coverings (“booties”).

The Act requires the Authority to “consult with the Commissioner of Health related to any specification requirements for what manufactured products are to qualify as personal protective equipment.” To meet this requirement, Staff discussed the PMTC Program, its structure and implementation and the proposed definition of PPE with a Deputy Commissioner of the Department of Health.

Qualified Facility (defined by statute): Statute provides that a facility must meet one of five criteria (detailed below) to meet the definition of a Qualified Facility. The term is used in determining both applicant eligibility and the amount of tax credits to be awarded.

Qualifying Full-Time Job (defined by statute): According to statute to be counted as a Qualifying Full-Time Job a position must (i) offer at least 35 hours per week of employment at a pay rate of at least \$15 per hour, (ii) provide health benefits, and (iii) be involved in the manufacture of PPE. The term is used in determining both applicant eligibility and the amount of tax credits to be awarded.

Eligibility

The following highlights certain key eligibility requirements for the PMTC Program. Full eligibility details are contained in the draft proposed rules in section 24.3 and the ERA in sections 106 and 107. To be eligible, a project must meet various eligibility criteria at the time of

application and the applicant must submit certifications evidencing satisfaction of Program requirements and conditions.

Completed Project

Applications will only be accepted for projects that have completed their capital investment in the development of PPE manufacturing. All such capital investment must be completed no later than December 31, 2022. (Applicants will have up to eighteen months following a project's Completion Date of Capital Investment to submit their applications.)

Qualified Facility

As part of the eligibility requirements for the PMTC Program, the business must be located in a Qualified Facility. To be a Qualified Facility, the facility must be engaged in the manufacturing of PPE and must meet one of the following criteria:

- Located in a redevelopment area or rehabilitation area as defined in section 3 of P.L.1992, c.79 (C.40A:12A-3);
- Located in a Smart Growth Area as identified by the Office of Planning Advocacy;
- A facility in which the manufacturing of personal protective equipment is part of a research collaboration between the applicant and a college or university located within the State;
- A facility in which the applicant has established an apprenticeship program or pre-apprenticeship program with a technical school or community college located within the State; or
- A building vacant for not less than seven years, in need of rehabilitation with a minimum of 250,000 square feet.

Capital Investment

As part of eligibility for the PMTC Program, the business must meet minimum capital investment requirements that vary based on the type of project (new construction vs rehab or improvement), size of the facility, and the county in which the Qualified Facility is located. Below is a table that reflects the capital investment requirements for the PMTC Program. For the purposes of this program, there are seven "southern counties" which are as follows: Atlantic, Burlington, Cape May, Cumberland, Gloucester, Ocean, Salem. The other 14 New Jersey counties are considered northern counties.

Project Type	Project Location	Minimum Capital Investment
New construction	Southern counties	\$100/SF of gross leasable area
New construction	Northern counties	\$120/SF of gross leasable area
Rehab or improvement	Southern counties	\$10/SF of gross leasable area
Rehab or improvement	Northern counties	\$20/SF of gross leasable area

Job Creation / Retention

In addition to being located in a Qualified Facility and meeting a minimum capital investment requirement, the applicant must create or retain a minimum number of Qualifying Full-Time Jobs, based on the location of the Qualified Facility. The requirement is the creation of at least five new jobs or the retention of at least 15 jobs in the seven southern counties, and the creation of at least 10 new jobs or the retention of at least 25 jobs in the northern counties.

Other Eligibility Requirements

In addition to meeting the program eligibility listed above, the applicant must be in substantial good standing with the NJ Department of Labor and Workforce Development, the NJ Department of Environmental Protection, and the NJ Department of Treasury (as determined by each Department). If a compliance issue exists, the applicant must have an agreement with the respective Department that includes a practical corrective action plan, as applicable. Furthermore, the applicant will be required to provide as a part of the application process a valid tax clearance certificate from the NJ Division of Taxation within the NJ Department of Treasury.

The Authority will also require that any applicant for the PMTC Program must comply with the Authority's standard Affirmative Action and Prevailing Wage requirements. Because applications will only be accepted upon a project's completion and the award is based on and requires a certain amount of capital investment, the proposed rules provide that Prevailing Wage applies to all capital investment, specifically including pre-application work. However, as these proposed rules serve as the notice to applicants of this requirement, Prevailing Wage applies only after the proposed rules become effective (upon filing with the Office of Administrative Law).

Tax Credit Award and Calculation

Tax credit amounts for the PMTC Program are calculated on a "per Qualifying Full-Time Job" basis, and the calculation is based on the sum of a base credit and all applicable Additional Credits.

The base credit is \$10,000 for each Qualifying Full-Time Job involved in the manufacturing of PPE at the Qualified Facility.

To count as a Qualifying Full-Time Job, a position must meet several criteria. The employee must:

- Spend at least 50% of his or her time working on or in support of the manufacture of PPE;
- Perform at least 80% of his or her work at the Qualified Facility;
- Be employed for at least 35 hours a week;
- Be paid an hourly wage of not less than \$15; and
- Be provided with health benefits under a plan authorized pursuant to State or federal law.

In addition to the base credit, additional bonus credits are available, as illustrated below, for all Qualifying Full-Time Jobs involved in the manufacture of PPE in the Qualified Facility if the project meets the following criteria:

Bonus Criteria	Tax Credit Bonus Amount (per job)
Qualifying FT Jobs in a facility of more than 250,000 SF that has been vacant for seven years or more and in need of rehabilitation	\$1,000 per job
Qualifying FT Jobs in a facility that has a research collaboration with a NJ college or university	\$1,500 per job
Qualifying FT Jobs in a facility that has an apprenticeship or pre-apprenticeship program with a NJ technical school or community college	\$1,000 per job

In recognition of the nature of starting and ramping up a new business, the applicant is allowed to count jobs created or retained as of the Start Date of Capital Investment and continuing for as much as 12 months following the Completion Date of Capital Investment. In all circumstances, jobs must have been created before the actual application date. This option may lead applicants to delay their application in order to take maximum advantage of the hiring done following the Completion Date of Capital Investment. For more detail, see: Application Requirements and Process, below.

All tax credits are one-time credits to be applied in the tax year of the Completion Date of Capital Investment. To qualify for the additional credits, the applicant must meet the additional credit criteria described above at the time of application.

An applicant that meets more than one criterion for the additional credits may be awarded the sum of the total additional credits for which it is eligible. However, the total award per project (for all types of credits under the PMTC Program) is limited to \$500,000 per project.

Tax credits in excess of the applicant's liability in the taxable year of filing will be treated as refundable overpayments. .

Application Requirements and Process

Applications will be accepted for Completed Projects that have reached their Completion Date of Capital Investment on or before December 31, 2022. Applicants must submit their applications no later than 18 months following the close of the tax year of the Completion Date of Capital Investment.

The proposed rules were designed to recognize the natural flow of hiring for a new manufacturing enterprise (i.e., that some hiring takes place during the capital investment process, some will occur as the capital investment process is being completed and more will occur as the sales and hence the production requirements increase over time). In light of this timing, the rules allow the tax credit determination to be based on all Qualifying Full-Time Jobs created or retained from the Start Date of Capital Investment and continuing for as much as twelve months following the Completion Date of Capital Investment (but no later than the actual application date).

Post-Approval Process

Traditionally, most of the tax credit programs the Authority administers on behalf of the State of New Jersey are performance-based, meaning the project is preliminarily approved for a tax credit based on economic activity (i.e. job creation, capital investment, or qualified expenditures) that the project expects to generate, and the actual issuance of tax credits only occurs after the Authority verifies, through a post-approval certification process, to what extent the project actually delivered the economic benefits that the tax credit award was based on.

Because the projects of businesses applying for the PMTC Program will be completed at the time of application, the Authority will be able to determine at the time of application whether all necessary requirements have been met. Therefore, following approval by the Board, staff will send an Approval Letter to the applicant, which letter will include certain conditions subsequent that the applicant must meet in order to be and remain eligible for the award of tax credits. The applicant will execute and return the Approval Letter to the Authority.

Once the applicant has returned the executed Approval Letter, the Authority will notify the Division of Taxation of the final approval. The Division will then issue the tax credit certificate to the applicant. The applicant's use of the tax credit shall be limited by N.J.A.C. 19:31-21.9(a) or (b), as applicable.

Fees

The Authority will charge fees to each applicant, as follows:

- A one-time non-refundable application fee of \$2,000;
- A one-time non-refundable approval fee of \$5,000;
- An annual servicing fee of \$2,000 to be submitted at the time the business submits its annual report;
- A non-refundable fee of \$1,000 for each request for any administrative changes, additions, or modifications to the tax credit, provided that, if Staff deems the changes to be major, such as those requiring extensive staff time and Board approval, the fee will increase to \$2,500; and
- A non-refundable fee of \$2,500 to terminate an existing incentive agreement in order to participate in the PPE Manufacturing Tax Credit program, provided that, if Staff deems the changes to be major, such as those requiring extensive staff time and Board approval, the fee will increase to \$7,500.

In addition, if the Authority incurs direct costs of due diligence, i.e., debarment/disqualification reviews, or other analyses by a third party retained by the Authority, the applicant will be required to reimburse the full amount of such costs.

Application Evaluation Process

Applications will be reviewed on a first-come, first-reviewed basis beginning with the completed application bearing the earliest submission date, subject to an annual cap of \$10 million for each tax year 2020, 2021, and 2022.

Staff will review and confirm proof of business location, the amount of capital investment, the amount of new and retained jobs, the products manufactured and other information essential to determining eligibility and, if appropriate, the amount of tax credits awarded. Verification of the amount of capital investment and the number of jobs will be based on a certification by an independent qualified CPA. Other forms of verification could include but will not be limited to company financial statements, facility leases, payroll information, and other information and documentation that may be necessary to substantiate the information provided in the application.

Upon completion of the review of an application, Staff will submit a recommendation on the application and the tax credit amount to the Board for approval.

Ongoing Requirements

Eligible applicants must commit to employing Qualifying Full-Time Jobs for which tax credits are awarded for a period of five years and to certify that such jobs remain open annually during the five-year period.

Failure to maintain the number of jobs on which the tax credits were based will result in the recapture of the awarded credits in an amount based on the period of time the taxpayer has been in compliance and the number of qualifying full-time jobs that the taxpayer has maintained.

Rulemaking Process

The ERA authorizes the Authority to promulgate special adoption rules for the PMTC Program, which will be effective immediately upon filing with the Office of Administrative Law and continue for 360 days. In addition, Staff proposes pursuing concurrently the proposal of long-term rules, which will include a 60-day public comment process pursuant to the Administrative Procedures Act rulemaking procedures.

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 PMTC Program rules were available for review and of the opportunity to provide informal input.

The Authority staff convened one virtual public “Listening Session”, which provided an overview of the PMTC Program draft rules and the opportunity for the public feedback, on Wednesday, June 9, 2021 at 5:30 PM.

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 (PPEmanufacturingtaxcredit@njeda.com) from June 4th through June 14th, 2021.

Chief Compliance Officer Certification of Draft Rule Proposal

Pursuant to Section 101(b) of the 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 the responsibilities of the CCO is to:

(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 new act] 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;

The Authority has designated Bruce Ciallella as the CCO and in that capacity he has reviewed the proposed rules and regulations for the PMTC Program. Subject to the Board taking action to approve the certification for submission to the New Jersey Office of Administrative Law for publication in an upcoming issue of the New Jersey Register, Mr. Ciallella is prepared to sign and submit the certification.

Program Evaluation Plan

Staff plans to establish a framework of key performance indicators (KPIs) to quantifiably measure over time how well the PMTC Program will meet the NJEDA's operational and strategic goals. Along with the goals and outcome of the program, the Authority will also ask applicants to supply demographic information related to the businesses applying for the PMTC Program, including demographic information with respect to the company's leadership. This information will be provided on a voluntary basis as this information is not necessary to determine eligibility under the program. This is part of the Authority's ongoing efforts to measure to what extent its programs and services are serving New Jersey's diverse residents, communities, and businesses. Other metrics are anticipated to focus on the PMTC Program's outreach efforts and volume of applicants, process and operational effectiveness, and economic development outcomes. The KPIs will provide valuable insight for staff and the Board to assess the effectiveness of the PMTC Program. These KPIs are still under development.

Request of the Members

The Members are asked to approve:

1. The creation of the PMTC Program, a tax incentive program authorized by the New Jersey Economic Recovery Act of 2020 (Sections 106 and 107 of P.L. 2020, c. 156; the "Act"), to encourage the development of PPE manufacturing and the creation of related jobs in the state; and
2. The attached special adopted new rules and concurrent proposed new for the PMTC 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.



Tim Sullivan, CEO

Prepared by Doug Yorke and Eric Solomon

Attachments: Appendix A - Proposed New Rules – PMTC Program

Appendix A:

Proposed Special Adopted New Rules and Concurrent Proposed New Rules

The following rules are intended to serve as both the Special Adopted New Rules and the Proposed New Rules. They have been reviewed and commented on by the Office of the Attorney General, the Governor's Rules Office and the Department of Treasury. Where required by statute, Staff has consulted with the Commissioner of Health.

OTHER AGENCIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Authority Assistance Programs

PPE Manufacturing Tax Credit Program

Specially Adopted and Concurrently Proposed New Rules: N.J.A.C. 19:31-24

Specially Adopted and Concurrently Proposed New Rules Authorized: _____, 2021, by Tim Sullivan, Chief Executive Officer, New Jersey Economic Development Authority.

Filed: _____, 2021, as R.2021 d._____.

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

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

Concurrent Proposal Number: PRN 2021-_____.

Effective Date: _____, 2021 [Date Filed].

Expiration Date: _____, 2022 [360 Days from Effective Date].

Submit written comments by _____, 2021, to:

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

In accordance with P.L. 2020, c. 156, the New Jersey Economic Development Authority (“NJEDA” or “Authority”) has adopted the following new rules to implement the provisions of the New Jersey Economic Recovery Act of 2020, establishing the Personal Protection Equipment (PPE) Manufacturing Tax Credit Program Act, sections 106 and 107 of P.L. 2020, c. 156.

The new rules became effective on _____, 2021, upon acceptance for filing by the Office of Administrative Law. The specially adopted new rules shall be effective for a period not to exceed 360 days from the date of filing, that is, until _____, 2021.

Concurrently, the provisions of the new rules are being proposed for readoption in accordance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The adopted amendments will become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-6.4(f)) if filed on or before the 360-day expiration date from the date of filing.

The special adoption and concurrent proposal follows:

Summary

The PPE Manufacturing Tax Credit Program (“PPE Manufacturing”) provides tax credits to projects that have invested in the development of PPE manufacturing within the State in the taxable years 2020-2022. The tax credits are based on the number of new and retained jobs involved in or supporting the manufacture of PPE in a qualified facility. The PMTC Program awards tax credits for each Qualifying Full-Time Job created (\$10,000 per job). It also makes additional credits available for each Qualifying Full-Time Job if the applicant meets certain other criteria that support the State’s broader economic goals (\$1,000 or \$1,500 per job depending on the criterion). The total available credits for a taxpayer’s project are limited to \$500,000 for the applicable taxable year or privilege period for which the taxpayer applies.

To be a qualified facility, the facility must be engaged in the manufacturing of personal protective equipment. Additionally, the facility must meet one of the following five criteria based on location or use: (1) Located in a redevelopment area or rehabilitation area as defined in section 3 of P.L.1992, c. 79 (C.40A:12A-3); (2) Located in a Smart Growth Area as identified by the Office of Planning Advocacy; (3) A facility in which the manufacturing of personal protective equipment is part of a research collaboration between the applicant and a college or university located within the State; (4) A facility in which the applicant has established an apprenticeship program or pre-apprenticeship program with a technical school or community college located within the State; or (5) A building vacant for not less than seven years, in need of rehabilitation with a minimum of 250,000 square feet.

To be eligible for the program, an applicant must also meet minimum capital investment requirements and hiring thresholds. The minimum capital investment requirements vary based on the type of project (new construction, rehabilitation or improvement), the size of the facility, and the county in which the qualified facility is located. For the purposes of this program, the seven southern New Jersey counties are as follows: Atlantic, Burlington, Cape May, Cumberland,

Gloucester, Ocean, Salem. The remaining fourteen counties of the State are considered northern counties.

In addition to being located in a qualified facility and meeting a minimum capital investment requirement, the facility must create or retain a minimum number of jobs, based on the location of the qualified facility. The requirement is the creation of at least five new jobs or the retention of at least fifteen jobs in the seven southern counties of the State, and the creation of at least ten new jobs or the retention of at least twenty-five jobs in the northern counties. The rules clarify that each qualifying full-time job must meet certain parameters including but not limited to: (1) dedicating at least 50% of the employee's hours per week to or in support of the manufacture of PPE; (2) being performed no less than 80% in the qualified facility; and (3) offering health benefits no later than 90 days following the date of hire.

The PPE Manufacturing Tax Credit Program awards tax credits based on the number of qualifying new full-time jobs created (\$10,000 per job) in the manufacturing of PPE at the qualified facility. The program also makes additional tax credits available for all new or retained qualifying full-time jobs involved in the manufacture of PPE that meet certain other criteria that support the State's broader economic goals. Specifically, for a qualifying full-time job in a facility of more than 250,000 square feet that has been vacant for seven years or more, the bonus is \$1,000 per job; for a qualifying full-time job in a facility that has a research collaboration with a New Jersey college or university, the bonus is \$1,500 per job; and for a qualifying full-time job in a facility that has an apprenticeship or pre-apprenticeship program with a New Jersey technical school or county college, the bonus is \$1,000 per job.

While the program is available for tax credits during the taxable years or privilege periods 2020, 2021, and 2022, applicants will have an additional 18 months following the end of their taxable year or privilege period to apply for the Program. All applications must be submitted on or before June 30, 2024.

The following summarizes the contents of each section of the proposed new rules implementing the PPE Manufacturing program:

N.J.A.C. 19:31-24.1 Applicability and scope – Addresses the statutory authority for the program and summarizes the scope and purpose of the program, which is to encourage economic development, job creation, and the retention of significant numbers of jobs in imminent danger of leaving the State, pursuant to sections 106 and 107 of P.L. 2020, c. 156.

N.J.A.C. 19:31-24.2 Definitions – Incorporates terms defined in P.L. 2020, c. 156 pertaining to the program, clarifies statutory terms, and defines additional terms included in the implementation of the program. The additional terms are “act,” “board,” “approval letter,” “capital investment,” “college or university,” “commitment period,” “completion date of capital investment,” “county college,” “independent institution of higher education,” “manufacturing or manufacture,” “mask,” “new hire,” or “new qualifying full-time job,” “northern counties,” “partnership,” “privilege period,” “professional employer organization,” “program,” “project,” “public research university,” “retained qualifying full-time job,” “soft costs,” “southern counties,” “square foot of gross leasable area,” “start date of capital investment,”

“state college,” “taxable year,” “taxpayer,” and “technical school.” The definition of “qualifying full-time job” is expanded for consistency with other Authority programs. In accordance with Sections 106(i) and 107(j) of P.L. 2020, c. 156, the Authority has consulted with the New Jersey Department of Health regarding the definition of “personal protective equipment,” including its expansion beyond the statutory definition to include head coverings and footwear coverings.

N.J.A.C. 19:31-24.3 Eligibility criteria – Outlines the criteria for a taxpayer to be eligible for tax credits, including requirements for capital investment and creation or retention of new or retained qualifying full-time jobs, and demonstration to the Authority by the taxpayer that the facility is located in a redevelopment area or rehabilitation area or a Smart Growth Area or that it meets certain other criteria relating to minimum new or retained jobs or minimum capital investment; and, prohibits the award of tax credits to a taxpayer that has previously received incentives administered by the Authority unless the capital investment incurred and the new or retained qualifying full-time jobs identified in the taxpayer’s application are separate and apart from any capital investment or jobs underlying the previous award of incentives.

N.J.A.C. 19:31-24.4 Application submission requirements – Establishes the information and procedures required for submitting an application to the Authority for tax credits under the program.

N.J.A.C. 19:31-24.5 Fees – Establishes non-refundable application and other fees intended to assist the Authority in recouping the administrative costs in processing applications.

N.J.A.C. 19:31-24.6 Evaluation process; approval and award of tax credits – Outlines the Authority’s review process, which comprises a review to determine eligibility of a project, entails a Board determination and notification of the taxpayer and the Division of Taxation of the determination.

N.J.A.C. 19:31-24.7 Determination of tax credit amount; application of the tax credit – Establishes the base amount of the value of tax credit, as well as additional credits which shall be based on factors outlined in the section and explains what tax liabilities the credits may be applied against. The section also outlines how the overpayment of tax credits is treated.

N.J.A.C. 19:31-24.8 Approval letter – Requires that all applicants execute an approval letter with the Authority to establish the terms and conditions and requirements of the award.

N.J.A.C. 19:31-24.9 Annual compliance certificate; compliance – Imposes the annual reporting requirements of the taxpayer during the term of the commitment agreement. Establishes provisions for the recapture of tax credits in certain instances wherein the taxpayer ceases to comply with its job retention commitments or fails to provide its annual certification and/or related fee.

N.J.A.C. 19:31-24.10 Appeals – 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.

N.J.A.C. 19:31-24.11 Severability— 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.

Social Impact

The primary purpose of the NJ PPE Manufacturing Tax Credit Program is to encourage the production of essential PPE manufacturing here in New Jersey, as well as economic development and job creation. The proposed new rules, which establish the PPE Manufacturing Tax Credit Program, are intended to have a positive social impact, including the enhancement of public health conditions by supporting the availability of PPE in the State, the encouragement of pre-apprenticeship and apprenticeship programs, and the bolstering of other good-paying jobs. In addition, by encouraging the use of buildings that have been vacant for at least seven years, the rules enhance the redevelopment of communities.

Economic Impact

The proposed new rules implementing the PPE Manufacturing Tax Credit Program are intended to bolster the State's economy by stimulating new economic development and, indirectly, by positively affecting the health of the state's citizens, including its workers. The PPE Manufacturing Tax Credit Program makes tax credits available for the taxable years or privilege periods 2020, 2021, and 2022. Applicants have an additional 18 months following the end of the applicable taxable year or privilege period to apply for tax credits. The total available tax credits are limited to \$500,000 per applicant per project and the Program has a cap of \$10 million per year.

Federal Standards Statement

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

Jobs Impact

The Authority believes that the proposed new rules will result in stimulating the creation of new private sector jobs, as well as supporting job growth in the construction industry due to the capital investment and job requirements of the PPE Manufacturing Tax Credit Program. The Program awards \$10,000 in tax credits for each new qualifying full-time job involved in the manufacture of PPE. It also makes additional credits available for new and retained qualifying full-time jobs if the applicant meets certain other criteria that support the State's broader economic goals.

Agriculture Industry Impact

The proposed new rules will have no impact on the agriculture industry of the State of New Jersey.

Regulatory Flexibility Analysis

The proposed new rules may impose reporting, recordkeeping, or other compliance requirements on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., however, any costs will be minimal and fully offset by the amount of financial assistance received. The proposed fees for the program are similar to other fees charged for existing EDA tax credit programs and 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 new rules will not impact the amount or cost of housing units, including multi-family rental housing and for sale housing in the State. The proposed new rules implement the PPE Manufacturing program which provides incentives to encourage economic development, job creation, and the local manufacture of essential PPE within the State.

Smart Growth Development Impact Analysis

The proposed new rules include one or more provisions aimed encouraging the creation of PPE manufacturing facilities within the State's Smart Growth Areas. The proposed new rules implement the PPE Manufacturing program, which provides incentives to encourage economic development, job creation, and the local manufacture of essential PPE.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

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

Full text of the specially adopted and concurrently proposed new rules follows:

SUBCHAPTER 19:31-24.1 PPE Manufacturing Tax Credit Program

19:31-24.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement Sections 106 and 107 of the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, establishing the PPE Manufacturing Tax Credit Program. The Act authorizes the Authority to administer the program to encourage economic development, job creation, and the production of PPE within the State. The Board may approve the award of tax credits to a taxpayer upon application of the taxpayer and following the execution of an approval letter and the payment of fees, subject to the limitations set forth in the subchapter.

19:31-24.2 Definitions

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

“Act” means, sections 106 and 107 of P.L. 2020, c. 156.

“Approval Letter” means the letter sent by the Authority to the applicant that sets forth the conditions to maintain the approval and to receive the tax credits, the amount of tax credits, the date the commitment period commences, and other requirements to comply with the program. The approval letter will require the applicant to submit certain additional information on an annual basis in order to preserve the approval of the tax credits.

“Authority” means the New Jersey Economic Development Authority established by section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

“Board” means the Board of the New Jersey Economic Development Authority, established by section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

“Capital investment” means expenses at a qualified facility that a taxpayer incurs prior to the submission of an application to the Authority but no earlier than March 9, 2020, for:

1. Site preparation and construction, repair, renovation, improvement, equipping, or furnishing on real property or of a building, structure, facility, or improvement to real property, site-related utility and transportation infrastructure improvements, and plantings, solar panels and components, energy storage components, installation costs of solar energy systems or other environmental components required to attain the level of silver rating and gold rating standards or above in the LEED building rating system, but only to the extent that such capital investments have not received any grant financial assistance from any other State funding source including N.J.S.A. 52:27H-80 et seq.

2. Obtaining, and installing furnishings and machinery, apparatus, or equipment, including but not limited to material goods subject to bonus depreciation under sections 168 and 179 of the federal Internal Revenue Code (26 U.S.C. ss.168 and 179), for the operation of a business on real property or in a building, structure, facility, or improvement to real property; or any combination of the foregoing. . Capital investment shall include the value of a capital lease, as defined by generally accepted accounting practices (GAAP), of furnishings and machinery, apparatus, or equipment, based on the shorter of the useful life of the leased property or the commitment period.

3. Associated soft costs, which shall not exceed 20 percent of all capital investment.

4. Capital investment does not include site acquisition or vehicles and heavy equipment not permanently located in the building, structure, facility, or improvement.

“College or university” means a county college, an independent institution of higher education, a public research university, or a State college.

“Commitment period” means a five-year period commencing with the date on which an eligible business may claim a tax credit under the program.

“Completion date of capital investment” means the date of the certificate of occupancy or other indication of completion acceptable to the Authority.

“County college” means an educational institution established by one or more counties, pursuant to chapter 64A of Title 18A of the New Jersey Statutes.

“Director” means the Director of the Division of Taxation in the Department of the Treasury.

“Independent institution of higher education” means a college or university incorporated and located in New Jersey, which by virtue of law, character, or license is a nonprofit educational institution authorized to grant academic degrees and which provides a level of education that is equivalent to the education provided by the State’s public institutions of higher education, as attested by the receipt of and continuation of regional accreditation by the Middle States Association of Colleges and Schools, and which is eligible to receive State aid under the provisions of the Constitution of the United States and the Constitution of the State of New Jersey, but does not include any educational institution dedicated primarily to the education or training of ministers, priests, rabbis, or other professional persons in the field of religion

“Manufacturing” or “manufacture” means the performance of an operation or series of operations, the object of which is to place items of tangible personal property in a form, composition or character different from that in which they were acquired. The change must be substantial and must result in a transformation of property into a different or substantially more useable product.

“Mask” means any one of the following: (i) an N95 respirator regulated by the United States National Institute for Occupational Safety and Health (NIOSH); (ii) any other respirator approved or allowable under an active Emergency Use Authorization by the United States Food and Drug Administration; (iii) a tightly-fitting face covering made of multiple layers of non-woven material, with a nose wire and ear loops; or (iv) a tightly-fitting face covering made of multiple layers of cloth or other woven material or breathable fabric, with a nose wire and ear loops. “Mask” does not include a face-covering that allows light to shine through when held up to a light source or that contains exhalation valves or vents.

“New qualifying full-time job” means a qualifying full-time job created by the taxpayer that did not previously exist in this State prior to the start date of capital investment. To qualify as a “new qualifying full-time job,” the employee filling the qualifying full-time job shall have been hired between the start date of capital investment and the earlier of: (i) 12 months after the completion date of capital investment; or (ii) the application date. “New qualifying full-time job” shall not mean a full-time job filled by an existing employee who was not involved in the

manufacturing of personal protective equipment who is transferred to a full-time job involved in the manufacturing of personal protective equipment.

“Northern counties” means Bergen County, Essex County, Hudson County, Hunterdon County, Mercer County, Middlesex County, Monmouth County, Morris County, Passaic County, Somerset County, Sussex County, Union County, Warren County.

“Partnership” means an entity classified as a partnership for federal income tax purposes.

“Personal protective equipment” or “PPE” means coveralls, face shields, gloves, gowns, masks, respirators, footwear coverings, head coverings, safeguard equipment, and other equipment designed to protect the wearer from the spread of infection or illness.

“Privilege period” means the calendar or fiscal accounting period for which a tax is payable under the Corporation Business Tax Act, N.J.S.A. 54:10A-5.

“Professional employer organization” means an employee leasing company registered with the Department of Labor and Workforce Development pursuant to P.L. 2001, c.260 (N.J.S.A. 34:8-67 et seq.).

“Program” means the PPE Manufacturing Tax Credit Program established by sections 106 and 107 of P.L. 2020, c. 156.

“Project” means the capital investment and the employment commitment at a qualified facility required by the Act and this subchapter. The capital investment must be completed during privilege periods 2020, 2021, or 2022.

“Public research university” means a public research university as defined in section 3 of P.L. 1994, c. 48 (N.J.S.A. 18A:3B-3).

“Qualified facility” means a facility or a portion of a facility used in connection with the manufacture of PPE, including pro rata areas such as bathrooms, breakrooms or administrative spaces that support the manufacture of personal protective equipment, that is:

1. Located in a redevelopment area or rehabilitation area as defined in section 3 of P.L.1992, c.79 (C.40A:12A-3);
2. Located in a Smart Growth Area as identified by the Office of Planning Advocacy;
3. A facility in which the manufacturing of personal protective equipment is part of a research collaboration between the taxpayer and a college or university located within the State;
4. A facility in which the taxpayer has established an apprenticeship program or pre-apprenticeship program with a technical school or community college located within the State; or

5. A building vacant for not less than seven years, in need of rehabilitation with a minimum of 250,000 square feet.

“Qualifying full-time job” means a full-time job in a business in this State at a qualified facility which the taxpayer has filled with a full-time employee at least 50 percent of whose time is dedicated to the manufacturing of personal protective equipment in this State or to the support of such manufacturing. The employee’s primary place of business shall be the qualified facility, and the employee shall spend at the qualified facility at least 80 percent of the employee’s time, or any other period of time generally accepted by custom or practice as full-time employment in New Jersey as determined by the Authority. The employee shall be employed for at least 35 hours a week and shall be paid employee wages at a rate of not less than \$15 per hour, and the employee’s wages shall be subject to withholding as provided in the “New Jersey Gross Income Tax Act,” N.J.S.54A:1-1 et seq. A qualifying full-time job shall also include a person who is employed by a professional employer organization pursuant to an employee leasing agreement between the taxpayer and the professional employer organization for the manufacturing of personal protective equipment in this State for at least 35 hours a week and who shall be paid employee wages at a rate of not less than \$15 per hour, and the person’s wages shall be subject to withholding as provided in the “New Jersey Gross Income Tax Act,” N.J.S. 54A:1-1 et seq. The Authority may determine any other standard of service generally accepted by custom or practice as full-time employment. A qualifying full-time job shall not include any person who works as an independent contractor or on a consulting basis for the taxpayer. A qualifying full-time job includes only a full-time job for which the taxpayer provides employee health benefits no later than 90 days following the date of hire under a health benefits plan authorized pursuant to State or federal law.

“Retained qualifying full-time job” means a qualifying full-time job in a business in this State that was at risk of being eliminated because the taxpayer was negatively impacted by the COVID-19 pandemic or the mitigation measures required by the State after the declared state of emergency on March 9, 2020, including, but not limited to, the taxpayer’s business was temporarily shut down, was required to reduce hours, had at least a 20 percent drop in revenue, had been materially impacted by employees who could not work due to the pandemic, or relied on a supply chain that has been materially disrupted and therefore slowed firm-level production. A retained qualifying full-time job may include an employee who was not involved in the manufacturing of personal protective equipment who is transferred to a qualifying full-time job.

“Soft costs” means all costs associated with financing, design, engineering, legal, or real estate commissions, including but not limited to, architect fees, permit fees, loan origination and closing costs, construction management, and freight and shipping delivery, but not including early lease termination costs, air fare, mileage, tolls, gas, meals, packing material, marketing, temporary signage, incentive consultant fees, Authority fees, loan interest payments, escrows, or other similar costs.

“Southern counties” means the following counties in New Jersey: Atlantic, Burlington, Cape May, Cumberland, Gloucester, Ocean, or Salem County. A facility that is located partially in a

southern county and partially in a northern county shall be treated as located entirely within the southern county.

“Square foot of gross leasable area” means rentable area of the building or structure as calculated pursuant to the measuring standards of the project. This standard will be defined in the lease for tenant applicants. The rentable area measures the tenant's pro rata portion of the entire office floor, including public corridors, restrooms, janitor closets, utility closets, and machine rooms used in common with other tenants, but excluding elements of the building or structure that penetrate through the floor to areas below. The rentable area of a floor is fixed for the life of a building or structure and is not affected by changes in corridor sizes or configuration.

“Start date of capital investment” means the date of execution of the first contract under which the taxpayer incurs expenses for eligible capital investments at the qualified facility or the date of the first invoice for such expenses but no earlier than March 9, 2020.

“State college” means a State college or university established pursuant to chapter 64 of Title 18A of the New Jersey Statutes.

“Taxable year” means the calendar or fiscal accounting period for which a tax is payable under the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1, et seq.

“Taxpayer” means the individual, estate, or trust filing a tax return pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., or the entity filing a tax return pursuant to the Corporation Business Tax, section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5). A taxpayer shall also include a partnership, a New Jersey S Corporation or any entity treated as a partnership for tax purposes.

“Technical school” means a program approved by the Department of Education that offers a sequence of courses that provide students with the coherent and rigorous content aligned with challenging academic standards and relevant technical knowledge and skills needed to prepare for further education and careers in current or emerging professions. A technical education program provides technical skill proficiency, an industry-recognized credential, a certificate, or an associate degree.

19:31-24.3 Eligibility criteria

(a) A taxpayer eligible pursuant to this section may submit an application to the Authority in accordance with N.J.A.C. 19:31-24.5 on or after the effective date of this subchapter but prior to the earlier of 18 months following the completion date of capital investment or July 1, 2024.

(b) The Authority shall make the determination that an applicant has met the criteria for eligibility for an award and shall determine the amount of the award. A taxpayer shall be eligible for tax credits if the Authority finds that as of the date of the taxpayer's application:

1. The taxpayer has made a capital investment in the qualified facility equal to or greater than the applicable amount set forth in subsection (c) of this section with a completion date of capital investment during the privilege periods or taxable years 2020, 2021 or 2022; and

2. The taxpayer has new qualifying full-time jobs or retained qualifying full-time jobs in an amount equal to or greater than the applicable number set forth in subsection (d) of this section.

(c) The minimum capital investment in a qualified facility required for eligibility under the program shall be as follows:

1. For the rehabilitation, improvement, fit-out, or retrofit of an existing premises, a minimum investment of:

i. \$10 per square foot of gross leasable area for a qualified facility located in any of the southern counties; and

ii. \$20 per square foot of gross leasable area for a qualified facility located in any of the northern counties.

2. For the new construction of a premises:

i. \$100 per square foot of gross leasable area for qualified facilities located in any of the southern counties; and

ii. \$120 per square foot of gross leasable area for qualified facilities located in any of the northern counties.

(d) The minimum number of new or retained qualifying full-time jobs required to be eligible for tax credits under the program shall be as follows:

i. For a qualified facility located in any of the southern counties, a minimum of five (5) new or fifteen (15) retained qualifying full-time jobs; and

ii. For a qualified facility located in any of the northern counties, a minimum of ten (10) new or twenty-five (25) retained qualifying full-time jobs.

(e) The Authority shall not award tax credits under this program to a taxpayer that has previously received incentives administered by the Authority unless the capital investment incurred and the new or retained qualifying full-time jobs identified in the taxpayer's application are separate and apart from any capital investment or jobs underlying the previous award of incentives.

19:31-24.4 Application submission requirements

(a) Each application to the Authority shall include the following information in an application format prescribed by the Authority:

1. Taxpayer information, which shall include the following:

- i. The name of the taxpayer;
- ii. Any other name(s) under which the taxpayer conducts business if applicable;
- iii. The name and contact details (name, telephone and email address) of the primary contact person and, if different, the name and contact details of a person with authority to sign on behalf of the taxpayer;
- iv. The taxpayer's address;
- v. The address of the qualified facility, if different than the taxpayer address;
- vi. The type of business organization;
- vii. The New Jersey tax identification number;
- viii. The Federal tax identification number;
- ix. A list of all New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury permits and approvals or obligations and responsibilities, with which the owner or business is associated with or has an interest in. The list shall identify the entity that applied for or received such permits and approvals or have such obligations and responsibilities, such as by program interest numbers or licensing numbers. The taxpayer shall also submit a written certification by the taxpayer, if an individual, or the owner or chief executive officer or equivalent officer for North American operations of the taxpayer, if not an individual, stating that the taxpayer applying for the program is in substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury as set forth in N.J.A.C. 19:31-24.6(b), and that the individual has reviewed the application information submitted and that the representations contained therein are accurate, under the penalty of perjury;
- x. A completed legal questionnaire disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;
- xi. Submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101; and
- xii. Any other necessary and relevant information as determined by the Authority for a specific application.

2. Project information shall include the following:

- i. Site control documentation, e.g., deed or lease;
- ii. An overall description of the completed project;

iii. A written certification of an independent certified public accountant that is qualified pursuant to subsection (b), below, which may be made pursuant to an agreed upon procedures letter acceptable to the Authority, relating to the capital investment. If the certified capital investment is less than the minimum eligibility requirement set forth in N.J.A.C. 19:31-24.3(c), the taxpayer shall not be eligible for the tax credit.

iv. Whether the project involved new construction or the rehabilitation, retrofit, improvement, or fit-out of an existing premises;

v. An explanation of how the facility at which the capital investment was made meets the definition of a qualified facility;

vi. The start date of capital investment and the completion date of capital investment;

vii. A floor plan of the qualified facility that identifies functionality and square footage;

viii. The types and descriptions of the personal protective equipment manufactured at the qualified facility;

ix. An acknowledgement by the taxpayer that it must maintain the qualifying full-time jobs for which tax credits are awarded for the duration of the commitment period and that failure to do so may result in the Authority recapturing all or part of the tax credits awarded;

x. Documentation evidencing that the taxpayer has met the criteria for the tax credit amounts in N.J.A.C. 19:31-24.7(b);

xi. Evidence to the Authority's satisfaction that the taxpayer complied 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 the effective date of this subchapter; and

xii. Any other necessary and relevant information as determined by the Authority for a specific application.

3. Employee information shall include the following:

i. A list of all current new and retained qualifying full-time jobs and all employees at the qualified facility, certified by the taxpayer, if an individual, or the owner or chief executive officer or equivalent officer for North American operations of the taxpayer, if not an individual, under penalty of perjury;

ii. The WR 30s of the taxpayer for the quarter immediately preceding the commencement date of capital investment and the quarter immediately preceding date of application;

iii. The taxpayer shall submit a certification of an independent certified public accountant that is qualified pursuant to subsection (b), below, which may be made pursuant to an agreed

upon procedures letter acceptable to the Authority, relating to employment. The number of all new and retained qualifying full-time jobs in the certification shall be utilized by the Authority in the calculation of tax credits and shall not be increased regardless of additional jobs located at the qualified facility. If the certification indicates that the employment is less than the minimum eligibility requirement set forth in N.J.A.C. 19:31-24.3(d), the taxpayer shall not be eligible for the tax credit; and

iv. Any other necessary and relevant information as determined by the Authority for a specific application.

(b) The Authority shall qualify certified public accountants and provide to the taxpayer the list of qualified certified public accountants, provided however, the taxpayer may select a certified public accountant that is independent to the taxpayer and not on the Authority's list of qualified certified public accountants for purposes of the capital investment certification, or the taxpayer's chief financial officer may certify for purposes of the employment certification upon the Authority's prior approval, if the taxpayer demonstrates an extenuating circumstance prohibiting the taxpayer 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 taxpayer, or the taxpayer is a business with fewer than 100 employees, as measured on a full-time equivalent basis.

(c) The Authority may require the submission of additional information to complete the application or may require the resubmission of the entire application, if incomplete.

19:31-24.5 Fees

(a) A business applying for benefits under this program shall submit a one-time non-refundable application fee of \$2,000.

(b) A business shall pay to the Authority the full amount of direct costs of due diligence, including, but not limited to, debarment/disqualification reviews, or other analyses by a third party retained by the Authority, if the Authority deems such retention to be necessary.

(c) A non-refundable fee of \$5,000 shall be charged prior to the approval of the tax credit by the Authority, except that the fee shall be refunded if the Authority does not approve the tax credit.

(d) A business shall pay to the Authority an annual servicing fee of \$2,000 at the time the business submits its annual report.

(e) A business shall pay to the Authority a non-refundable fee of \$1,000 for each request for any administrative changes, additions, or modifications to the tax credit. If the Authority deems the changes, additions or modifications to be major, such as those requiring extensive staff time and Board approval, the fee shall be \$2,500.

(f) A business seeking to terminate an existing incentive agreement in order to participate in the PPE Manufacturing Tax Credit program shall pay to the Authority a non-refundable fee of \$2,500 for a termination that does not require extensive staff time and Board approval and \$7,500 for a termination that requires extensive staff time and Board approval.

19:31-24.6 Evaluation process; approval and award of tax credits

(a) The Authority shall conduct a review of the applications on a first in time rolling basis commencing with the completed application bearing the earliest submission date, subject to an annual cap of \$10 million in any State fiscal year. Completed applications submitted in a fiscal year where the annual cap has been met will be considered first in the subsequent fiscal year. The review will determine whether the applicant:

1. Complies with all program eligibility criteria;
2. Satisfies the submission requirements, including fee requirements; and
3. Provides adequate information for the subject application.

(b) Before the Board may consider a taxpayer's application for tax credits:

1. The Authority will confirm with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury that the taxpayer is in compliance by being in substantial good standing with the statutes, rules and other enforceable standards of the respective department, or, if a compliance issue exists, the taxpayer has entered into an agreement with the respective department that includes a practical corrective action plan, as applicable.

i. Substantial good standing shall be determined by each department and mean, at a minimum, that the taxpayer:

(1) As to the Department of Labor and Workforce Development and the Department of Environmental Protection:

(A) Is in substantial compliance with all material statutes, rules and other enforceable standards of the respective department that apply to the taxpayer; and

(B) Has no material violations of those statutes, rules or other enforceable standards that remain substantially unresolved through entry into a corrective action plan, or other agreement with the department, with respect thereto; and

(2) As to all other departments, has no unpaid liability in excess of any threshold dollar amount(s) that may be established by each respective department.

ii. If the Department of Labor and Workforce Development, the Department of Environmental Protection, or the Department of the Treasury promulgates or issues its own more

stringent rule or standard defining the term “substantial good standing,” the respective department shall use such rule or standard to determine whether a taxpayer is in substantial good standing.

2. The Authority may contract with an independent third party to perform a background check on the taxpayer.

(c) Upon completion of the review of an application pursuant to (a) and (b) 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 and, shall promptly notify the applicant and the Director of the Division of the determination.

(d) Upon Board approval, the Authority shall provide the taxpayer with the approval letter set forth in N.J.A.C. 19:31-24.8. The taxpayer shall execute and return the approval letter to the Authority within the period of time required by the Authority. Absent extenuating circumstances or the Authority’s determination in its sole discretion, the Authority’s approval of the tax credits shall expire if the Authority does not receive the approval letter within the required period of time.

(e) Upon receipt of the executed approval letter from the taxpayer, the Authority shall notify the Director of receipt of the approval letter, and the taxpayer shall receive its tax credit certificate.

19:31-24.7 Determination of tax credit amount; application of the tax credit

(a) The tax credit for each qualifying full-time job shall be the sum of \$10,000 and the amount set forth in (b).

(b) The taxpayer shall receive the following amounts as a tax credit for each qualifying full-time job:

1. \$1,000 if the qualified facility is a building vacant for not less than seven years in need of rehabilitation with a minimum of 250,000 square feet.

2. \$1,500 for a qualified facility in which at the date of application the manufacturing of personal protective equipment is part of a research collaboration between the taxpayer and a college or university located within the State. The research collaboration must require at least 35 hours per week of collaborative activity, or any other standard of collaborative activity generally accepted by custom or practice as full-time, as determined by the Authority, and evidenced by an agreement at application.

3. \$1,000 for a qualified facility in which at the date of application the taxpayer has established an apprenticeship program or pre-apprenticeship program with a technical school or county college located within the State. The apprenticeship program or pre-apprenticeship program must require at least 35 hours per week of employment or training, or any other standard of apprenticeship or pre-apprenticeship activity generally accepted by custom or

practice as full-time, as determined by the Authority, and evidenced by an agreement at application.

(c) The total amount of all tax credits allowed to a taxpayer under this program shall not exceed \$500,000.

(d) The amount of tax credit per job will not be prorated if the number of qualifying full-time jobs in the application would have resulted in a tax credit amount that is reduced to the \$500,000 cap per taxpayer pursuant to subsection (c) above. For purposes of this program, the number of new and retained jobs shall be the number of new and retained qualifying full-time jobs for which the taxpayer receives a tax credit after the project cap is applied.

(e) The amount of credit awarded to a taxpayer may be applied against the tax liability otherwise due pursuant to the section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) or the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., as relevant to tax liability of the taxpayer.

(f) Notwithstanding the minimum tax schedule imposed pursuant to subsection (e) of section 5 of P.L.1945, c.162 (N.J.S.A. 54:10A-5), if the amount of the tax credit allowed exceeds the amount of corporation business tax otherwise due pursuant to section 5 of P.L.1945, c.162 (N.J.S.A. 54:10A-5), the amount of excess shall be treated as a refundable overpayment except that interest shall not be paid pursuant to P.L.1992, c.175 (N.J.S.A. 54:49-15.1) on the amount of overpayment attributable to this credit amount.

(g) If the credit exceeds the amount of tax liability otherwise due pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., that amount of excess shall be an overpayment for the purposes of N.J.S.A. 54A:9-7; provided, however, that subsection (f) of N.J.S.A. 54A:9-7 shall not apply.

(h) A taxpayer that is classified as a partnership or an entity treated as a partnership for tax purposes shall not be allowed a tax credit directly, but the amount of credit of each member or partner taxpayer in respect to the distributive share of partnership income under the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. , shall be determined by allocating to each member or partner taxpayer that proportion of the credit acquired by the partnership or entity that is equal to the taxpayer's share, whether or not distributed, of the total distributive income or gain of the partnership or entity for its taxable year ending within or with the taxpayer's taxable year.

(i) A New Jersey S Corporation shall not be allowed a tax credit against the tax imposed pursuant to the New Jersey Gross Income Tax N.J.S.A. 54A:1-1 et seq. directly, but the amount of gross income tax credit of a taxpayer in respect of a pro rata share of S Corporation income, shall be determined by allocating to the taxpayer that proportion of the gross income tax credit acquired by the New Jersey S Corporation that is equal to the taxpayer's share, whether or not distributed, of the total pro rata share of S Corporation income of the New Jersey S Corporation for its privilege period ending within or with the taxpayer's taxable year.

(j) The order of priority in which the tax credit allowed by this section and any other credits allowed by law may be taken, shall be as prescribed by the Director.

19:31-24.8 Approval letter

(a) The Board's award of the credit will be subject to conditions in the approval letter that the taxpayer must satisfy to remain in compliance with the program.

(b) The terms of the approval letter shall include, but shall not be limited to, the following:

1. A detailed description of the project that has resulted in job creation or retention, and the number of new and retained qualifying full-time jobs that are approved for tax credits;

2. The taxable year or privilege period of the tax credits;

3. The dates of the commitment period, a requirement that the taxpayer maintain the qualified full-time jobs for which tax credits are awarded for such period, and a provision allowing the Authority to recapture all or part of any tax credits awarded, at its discretion, if the taxpayer does not remain in compliance with this provision;

4. A method for the taxpayer to report annually as required pursuant to N.J.A.C. 19:31-24.9;

5. A provision permitting an audit of the payroll records of the taxpayer and any other evidence and documentation supporting the applications and certifications made pursuant to the requirements of the program;

6. A provision establishing the conditions under which the Authority, the taxpayer, or both, may terminate compliance with the requirements of the program;

7. An agreement by the taxpayer that the statute of limitations for the collection and assessment of corporation business tax or gross income tax, as applicable, will be extended to the period of the commitment period;

8. A requirement that the taxpayer indemnify and insure the Authority and the State;

9. Default and remedies, including, but not limited to, a default if a taxpayer made a material misrepresentation on its application; and

10. A provision requiring that 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), apply for two years after the tax credit certificate is issued.

19:31-24.9 Annual compliance certificate; compliance

(a) For each year of the commitment period, not later than 120 days following the end of the business's tax privilege period beginning with the year in which the capital investment was

certified, the taxpayer shall provide the Authority with its annual compliance certificate in a form satisfactory to the Authority. The annual compliance certificate shall include, but shall not be limited to:

1. A certification by the taxpayer, if an individual, or the owner or chief executive officer or equivalent officer for North American operations of the taxpayer, if not an individual, under the penalty of perjury, that the taxpayer has met its commitment to maintain the qualifying full-time jobs that were used in calculating the awarded tax credits under the program. Qualifying full-time jobs for a year shall be determined as the average of the monthly qualifying full-time jobs for the period.

2. For the purposes of the annual reports required pursuant to (a)(1) above, if a taxpayer has received an award for both new and retained qualifying full-time jobs, the taxpayer shall meet the employment requirements related to the retained qualifying full-time jobs before receiving tax credits for the new qualifying full-time jobs.

3. To the extent a retained qualifying full-time job that was the basis of an award no longer exists, the taxpayer shall include as a retained qualifying full-time job a new qualifying full-time job that is filled by a new hire, provided that the position is included in the order of date of hire and is not the basis for any other incentive award.

4. A certification by the taxpayer, if an individual, or the owner or chief executive officer or equivalent officer for North American operations of the taxpayer, if not an individual, under penalty of perjury, indicating whether or not the taxpayer is aware of any condition, event, or act, which would cause the business not to be in compliance with the approval, the Act, or the Approval Letter.

- (b) In the event a taxpayer fails to retain during the commitment period the number of qualifying full-time jobs for which tax credits were awarded, and such failure continues for two years, the Authority may recapture, at its sole discretion, all or a portion of the tax credits awarded. In determining the amount to recapture, the Authority shall recognize the period of time the taxpayer has been in compliance and the number of qualifying full-time jobs that the taxpayer has maintained.

- (c) Failure to submit the annual compliance certificate by the dates established in subsection (a) of this section shall result in a recapture of the awarded tax credits in accordance with the provisions of subsection (b) of this section.

- (d) In the event that any certification required from the taxpayer, including but not limited to, the certification required pursuant to subsection (a), is found to be willfully false or that the taxpayer 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 any award of tax credits in their entirety and may require repayment of all tax credits received by the taxpayer.

19:31-24.10 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 the hearing officer's finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. The Chief Executive Officer, or equivalent 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, or equivalent 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.

19:31-24.11 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: July 14, 2021

RE: Approval of Targeted Industries definitions for the Economic Recovery Fund

Summary

The Members are asked to approve the use of the Emerge Program list definitions and of targeted industries to help guide uses of Economic Recovery Fund (ERF) monies as required by the Economic Recovery Act of 2020 (ERA).

Background

As part of the ERA, the certain permitted uses of Economic Recovery Fund monies were amended to include financing, grants, investments, and memberships related to Authority projects and programs in targeted industries. The statute requires that the Board approve the list of targeted industries prior to utilizing ERF funds for these purposes.

Over the coming months, Staff intends to develop new policies and programs to integrate these new permitted uses and therefore request that the Board approve the attached targeted industries definitions.

The ERA provides a consistent definition of “targeted industry” for various programs and authorizes the Authority to amend the list from time to time. As part of the approval of the Emerge Program on May 12, 2021, the Board approved a policy with definitions for each of the targeted industries included in the statute, including providing examples of what activities and sub-sectors were included and excluded from each industry definition. Those definitions are attached to this memorandum.

The targeted industries included in the ERA statute were slightly broader than the targeted industries identified in the Governor’s 2018 Stronger and Fairer Economic Development Plan. Specifically, several industries are categorized differently (e.g., zero-emission vehicle research and development is identified separately from the Clean Energy industry and aviation is

identified separately from Advanced Transportation and Logistics industry) and Hemp Processing has been added as a new targeted industry in the ERA.

To standardize the uses of these targeted industries across multiple Authority efforts, Staff recommend that the same targeted industry definitions be used for ERF as were used in the Emerge Program.

Further, to ensure continued consistency, Staff recommend that moving forward, the list and definitions of targeted industries for purposes of ERF be automatically updated any time that the Board changes the targeted industries list or definitions for the Emerge Program.

Recommendation:

The Members are asked to approve the use of the Emerge Program list and definitions of targeted industries to help guide uses of Economic Recovery Fund (ERF) monies as required by the Economic Recovery Act of 2020 (ERA).



Tim Sullivan, CEO

Prepared by: B. Sabina / D. Ramsay / C. Coronato

Attachments

Attachment A: Economic Recovery Fund “Targeted Industries” Definitions

ATTACHMENT A

ECONOMIC RECOVERY FUND “TARGETED INDUSTRIES” DEFINITIONS

The proposed definition of “Targeted industry” is the following:

“Targeted industry” means any industry identified from time to time by the Authority which shall initially include advanced transportation and logistics, advanced manufacturing, aviation, autonomous vehicle and zero-emission vehicle research or development, clean energy, life sciences, hemp processing, information and high technology, finance and insurance, professional services, film and digital media, non-retail food and beverage businesses including food innovation, and other innovative industries that disrupt current technologies or business models.

The Authority may consider whether a business fits into another innovative industry that disrupts current technologies or business models, by assessing factors such as, whether businesses in the industry are offering products or services that significantly improve current market offerings on the basis of price or other performance levels, whether the new industry creates opportunities for new firms to enter and redefine the supply chain or value chain of an industry, or whether the industry utilizes new technology or business processes that allow New Jersey-based firms to collect a share of revenues that were traditionally only available to companies in other geographies.

The Authority developed definitions and policy interpretations for each of the listed industries within the definition of “Targeted industry” as included in the Emerge program regulations and statute.

The following industry definitions will also be used for the purpose of “Targeted Industries” for the Economic Recovery Fund (ERF) uses amended in the Economic Recovery Act of 2020. In addition, should these industries change as part of the Emerge Program, Staff would automatically utilize the same changes for ERF uses.

Advanced transportation and logistics industry includes, but is not limited to, the research, development, commercialization, and implementation of technology and innovative methodologies to move goods, services, and people, including by rail, road, air, sea, cable, space and the processing, storage, supply chain management, handling and packaging of goods and services.

Advanced transportation includes, but is not limited to, the areas of infrastructure, vehicles, and operations. Examples of advanced transportation technologies may include advanced transportation, sensor development, electrification of vehicles and infrastructure, new transport vehicle development, smart infrastructure and smart cities technologies.

Advanced logistics includes, but is not limited to, the research, development, commercialization, and implementation of innovative planning, storage, supply chain management, handling, and packaging of goods and services.

Examples of advanced logistics technologies may include real-time dynamic tracking or pricing, automated processing and handling, the use of blockchain and artificial intelligence, and the use of advanced telecommunication technologies in logistics.

Excluded from this industry are conventional warehousing and distribution facilities, operations and conventional transportation businesses, such as trucking.

Advanced manufacturing industry includes, but is not limited to, activities that integrate advanced or innovative technologies, processes and materials to improve the manufacturing of products. Such activities include research, development, commercialization, and implementation of new manufacturing methods and processes that utilize technology or other innovative methodologies including both physical equipment and software supporting advanced production.

Examples of advanced manufacturing technologies include additive manufacturing technologies, computer-aided manufacturing, utilization of advanced sensors and robotics to improve production, development of advanced materials to support production, and digital twin development and utilization. This industry also includes firms that manufacture either finished or interim advanced technologies or components.

Excluded from this industry are conventional manufacturing firms that do not sufficiently develop or utilize technologies such as those listed above.

Aviation industry includes, but is not limited to, commercial businesses that are directly involved with air transportation, which utilizes an aircraft, such as airplanes, helicopters and drones.

The aviation industry also includes aircraft manufacturing, aviation component manufacturing, aviation research, air safety, involvement with military aviation and the design, production or use of drones. The aviation industry also includes research, development, and commercialization of aviation-specific software, processes, guidance systems, technologies, and other industry-specific innovative methodologies. This industry also includes firms that manufacture either finished or interim advanced technologies or components.

Excluded from this industry are the operations of regularly scheduled commercial or private flights.

Autonomous vehicle research or development industry includes, but is not limited to, the research, development and implementation of technologies that support the advancement of vehicles that operate independently, increasingly without human involvement, and the related infrastructure for such vehicles.

Examples of autonomous vehicle and infrastructure technologies include sensors, radars, cameras, actuators, complex algorithms, machine learning systems, and software processors that support autonomous vehicle operations and maintenance. Excluded from this industry are research, development, and implementation of technologies that do not advance towards fully automated vehicular operations or the related infrastructure.

This industry also includes firms that manufacture either finished or interim advanced technologies or components.

Zero-emission vehicle research or development industry includes, but is not limited to, the research, development and implementation of technologies that advance the production of electric and other zero emission vehicles that reduce greenhouse gas emissions or improve air quality and the related infrastructure. This industry also includes firms that are undertaking specific projects to implement these technologies.

Examples of zero-emission vehicle technologies include plug-in-hybrid electric vehicles, battery-powered electric vehicles, hydrogen fuel cell-powered vehicles, vehicle charging infrastructure, electricity grid infrastructure improvements, and software to support these technologies.

Excluded from this industry are research, development, and implementation of technologies that do not reduce greenhouse gas emissions or improve air quality.

This industry also includes firms that manufacture either finished or interim advanced technologies or components.

Clean energy industry includes, but is not limited to, the research, development, commercialization, manufacturing of products and services, and implementation of technologies that support renewable energy generation and distributed energy resources, grid modernization, energy efficiency and zero-carbon building development, and transport system electrification.

Examples of clean energy technologies include solar power, onshore and offshore wind, electric battery storage, fuel-cell-based storage, carbon capture technologies, non-combustion waste-to-energy technologies, wave energy, water use minimization technologies, carbon-reducing materials, nuclear energy, heat pumps and geothermal, run of river hydroelectric, and other innovative recycling technologies and processes. This industry also includes firms that manufacture either finished or interim advanced technologies or components.

Excluded from this industry are distribution or transmission utilities, conventional landfill operations, combustion-based waste-to-energy projects, and natural gas projects.

Life sciences industry includes, but is not limited to, the research, development, commercialization, manufacturing, and implementation of innovative treatments, diagnostic

tools, healthcare related software, medical devices, services, and equipment that supports the study, protection and improvement of plant, animal and human life.

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

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

Hemp processing industry refers to activities in compliance with the federal Agriculture Improvement Act of 2018 (also known as the 2018 Farm Bill) and any applicable regulations regarding hemp processing promulgated by the New Jersey Department of Agriculture, United States Department of Agriculture, or the United States Food and Drug Administration, including but not limited to, the research, development, commercialization, processing and manufacturing of commercial and industrial hemp products derived from hemp seeds, oil, fibers and shives for commercial use, including in the automotive, construction, food and beverage, personal care, and textile industries.

The term also includes research and development activities that advance hemp processing equipment and technologies for production, testing, and manufacturing operations, provided that such activities comply with the above-referenced laws and regulations. This industry also includes firms that manufacture either finished or interim advanced technologies or components.

The hemp processing industry excludes hemp grown for personal use or with a tetrahydrocannabinol (THC) concentration of 0.3% or greater.

Information technology industry includes, but is not limited to, the research, development, and commercialization of advanced software products and information technology services.

Information technology industry includes specialization in application and software development, advanced data analytics, artificial intelligence, blockchain related development, eSports, cybersecurity, cloud computing, provision of web services or servers, telecommunications, mobile communications services, provision of software as a service and other computing technologies.

Information technology industry does not include retail IT service providers, software implementation services that utilize customized product implementations, third party technology implementation to utilizes off-the-shelf solutions, website design services, social media or marketing services, and businesses from other industries that generally utilize technology to support their business operations.

High technology industry includes, but is not limited to, the research, development, commercialization, and manufacturing of technology hardware, technology processes, electronics, and technology-based components.

High technology industry also includes specialization in microelectronics, telecommunications, electronics equipment and components, advanced computing hardware, data storage hardware, advanced optical products and equipment, advanced sensor and instrumentation development, digital imaging, electromagnetics, mobile communication devices and infrastructure, semiconductors and semiconductor equipment.

This industry also includes firms that manufacture either finished or interim advanced technologies or components.

Finance and insurance industry includes, but is not limited to, the research, development, commercialization and management of financial and risk-management solutions, products and services for individuals, businesses and government agencies, including insurance lines, investment banking, depository and lending, and investment management services.

The finance and insurance industry may include technology driven financial innovations generally referred to as fintech, research and development activities that advance finance and insurance industry practices, including executing financial transactions. The finance and insurance industry may also include wagering platforms and related products and services, cryptocurrencies and related products and services, and regional or global headquarters of finance and insurance operations.

Excluded from this industry are retail banks, insurance, or wagering operations, real estate or leasing companies, and short-term or “payday” lenders operations.

Professional services industry includes global headquarters, regional headquarters, or major service hubs (such as innovation centers or centers of excellence) of knowledge-economy based businesses, from which customers or operations across multiple states or countries are served.

Examples of knowledge-economy based businesses considered providing professional services include firms that specialize in consulting, accounting, advertising, law, marketing, architecture, design, and engineering firms.

Exclusions from this industry include local branch offices of professional services providers, real estate agents, travel agencies, local contractors or architects, trades-based services, financial planners, doctors, dentists, and other offices or business units where a material amount of the professionals require business licenses to operate in the State.

Film and digital media industry include, but is not limited to, the production and management of media communications, processes and technologies for theatrical motion pictures, television and cable broadcast, streaming services, web-based platforms. Digital media may include spoken

word production and media software including video games. Research and development activities that advance media production, management and technology are also included.

Exclusions are productions intended for local broadcast and local performance venues, and companies and businesses that provide indirect sources of support to the production industry such as food services (including craft services and catering) and vehicle rentals used solely for transportation purposes.

Non-retail Food and Beverages industry includes, but is not limited to, the growing, processing, packaging, preservation and distribution of raw agricultural goods into consumer food products, including fresh prepared foods, packaged foods, and alcoholic and nonalcoholic beverages, aquaculture and fisheries.

The industry includes the regional or global headquarters for food-based businesses, breweries, wineries and major wholesale food distribution facilities. Research and development activities that advance food innovation technologies, commercialization, production, food distribution models and manufacturing operations are also included in the non-retail food and beverage industry.

Excluded from this industry include distribution businesses serving retail food customers, including grocery stores, farmers markets, community supported agriculture organizations, bodegas, or convenience stores, and establishments that serve food and beverages, including restaurants, cafeterias, cafés, fast-food, pubs, delis, and catering businesses.



MEMORANDUM

TO: Members of the Authority
FROM: Tim Sullivan, Chief Executive Officer
DATE: July 14, 2021
Subject: Approval of Policy for ERF Innovation Centers of Excellence Investment

Summary:

Members of the Board are requested to approve:

1. Policies for utilizing the Economic Recovery Fund to undertake development of or invest in strategic innovation centers to accelerate economic recovery and drive the long-term growth of the State's innovation economy; and
2. The use of the \$55 million appropriated in the 2022 State Budget in accordance with the policies.

Economic Recovery Fund and Strategic Innovation Centers:

Under P.L. 1992, c. 16, the NJ Legislature approved the creation by NJEDA of an Economic Recovery Fund ("ERF"). The ERF was initially funded with bond proceeds. The uses and purposes of ERF are governed by the ERF statutes.

On January 7, 2021, Governor 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.

Additionally, the ERA amended the ERF statute, expanding the uses and purposes of ERF to permit alignment with the economic and community development priorities defined in the Governor's 2018 Stronger and Fairer Economic Development Plan. Among the amendments to ERF, the ERA expanded the ability of the Authority "to provide grants, financing, or equity in innovation centers, research centers, incubators, and accelerators, and other similar innovation-oriented entities, which are focused on the targeted industries as defined by authority's board or support increasing diversity and inclusion within the state's entrepreneurial economy."

As presented to and approved by the Board through a separate memorandum, the ERF targeted industries are the following. The definitions for these industries are contained in the other memorandum. All Strategic Innovation Centers must fit into these industries or must demonstrate that it meaningfully supports increasing diversity and inclusion within the State’s entrepreneurial economy.

- Advanced transportation and logistics,
- Advanced manufacturing,
- Aviation,
- Autonomous vehicle and zero-emission vehicle research or development,
- Clean energy,
- Life sciences,
- Hemp processing,
- Information and high technology,
- Finance and insurance,
- Professional services,
- Film and digital media,
- Non-retail food and beverage businesses, and
- Other innovative industries that disrupt current technologies or business models.

Per the ERF statute (N.J.S.A. 34:1B-7.14), determinations of projects to be financed from ERF require consideration of the following factors:

- The economic feasibility of the project;
- The degree to which the project will advance Statewide and regional strategies and objectives;
- The degree to which the project maximizes the leveraging of other sources of funds; and
- The degree to which the project promotes economic development, the creation or retention of jobs, and the stimulation of private sector investment and expansion.

Defining Strategic Innovation Centers

Staff proposes defining Strategic Innovation Centers as facilities that either directly support research and development (R&D), innovation, or entrepreneurship or are aimed at solving specific problems in new and innovative ways through a combination of services such as mentorship, networking opportunities, hands-on training, business support services, education opportunities, and/or access to testing, fabrication, or manufacturing facilities and equipment. This definition stems from Governor Murphy’s Economic Development Strategic Plan, “The State of Innovation: Building a Stronger and Fairer New Jersey Economy” which describes spaces in the in the innovation economy to include incubators, accelerators, collaborative workspaces, and spaces that “help create a more encouraging environment for entrepreneurs and young companies to take root in New Jersey.”^{1, 2}

¹ “The State of Innovation: Building a Stronger and Fairer Economy in New Jersey” (2018). The Office of the Governor of New Jersey

² Hochberg, Y. V. (2016). Accelerating Entrepreneurs and Ecosystems: The Seed Accelerator Model. *Innovation Policy and the Economy*, 16(1), 25-51. <https://journals.uchicago.edu/doi/abs/10.1086/1684985>

Strategic Innovation Centers play a critical role in the success of an innovation ecosystem as they provide fundamental support to entrepreneurs and innovators as they look to develop new technologies, businesses, or techniques for solving challenging problems.

Strategic Innovation Centers can take many forms such as: accelerators, incubators, research centers, innovative service delivery centers, or multi-tenant innovation clusters. Most have a common goal of being a physical location that brings people together to advance innovation. They are often focused on a specific industry or around solving a specific problem. They build a community cluster of like-minded individuals that collaborate on solving a common problem or advancing a common goal. The ability to coalesce entrepreneurs and innovators at a central location often leads to a quicker time to market and greater success.

Recent examples of the Authority taking an active role in the development of Strategic Innovation Centers include the MOU with New Jersey City University (NJCU) on a Sports Wagering and Financial Technology Workforce Development and Innovation Center and the MOU with Stockton University on the creation of an eSports Innovation Center. NJEDA staff initiated the conceptual process and then sought other State entities for collaboration and to pursue the creation of the Centers. Ultimately, these Centers will each act as connectors between industry, academia, and relevant State agencies to grow and support innovation in their respective sectors.

Benefits of Strategic Innovation Centers

Governor Murphy's Economic Development Strategic Plan includes, as one of its key goals, making New Jersey the state of innovation through investment in its people, ecosystem, physical spaces, and both private and public research and venture capital financing.

While New Jersey boasts a competitive number of startups, these new businesses tend to scale less quickly in New Jersey than new businesses in our peer States. Of large companies in the U.S., those with more than 500 employees, 11% are less than ten years old, compared to 5% in New Jersey.³

With up to five additional jobs created by each job in the innovation economy⁴, the economic multiplier effect from investing in New Jersey's innovation economy could have a massive positive economic impact on the state, resulting in new businesses and new jobs.

Large-scale innovation funding programs are common in other states and cities, providing them an opportunity to attract unique businesses and organizations that have multi-order economic impacts on their state. For example, New York City's LifeSci NYC Expansion Fund is a \$500 million, 10-year commitment to support commercial entities likely to attract significant capital and achieve long-term job growth in NYC. This fund was recently used to provide \$25 million in financial incentives for IndiBio, a life sciences accelerator run by SOSV, a globally-recognized multi-stage venture capital investor that has funded over 1,000 startups, to build their accelerator in the city. New York City also recently announced their intent to increase LifeSci NYC's funding

³ US Census, "Statistics of U.S. Businesses," 2015

⁴ Moretti, Enrico. (2012). The new geography of jobs. Boston: Houghton Mifflin Harcourt.

to \$1 billion, up from \$500 million, to spur additional research and develop new laboratory and incubator space in the city. As part of their announcement, Mayor de Blasio also announced the availability of up to \$112 million in City capital to award \$20 million to support one or more innovation projects. Although NJ has programmatic funding for companies that go through accelerators via the pilot program NJ Accelerate, the state does not currently have a funding mechanism to attract or launch innovation centers themselves in the state unless the innovation center has the capability to meet strong underwriting standards and service debt payments. Having only traditional debt financing currently available places NJ at a competitive disadvantage. Additionally, the ERA programs that support innovative economy, such as NJ Ignite and the NJ Innovation Evergreen Fund, do not directly support the innovation centers themselves, but, rather, the companies that would avail themselves of such centers.

Policies for developing or investing in Strategic Innovation Centers

Staff proposes two policies related to the development of additional Strategic Innovation Centers across the state. NJEDA may have other mechanisms to pursue or support Strategic Innovation Centers, such as inter-agency MOUs as was done with NJCU and Stockton University, but those mechanisms are not addressed in this memorandum.

First, NJEDA Staff will look for opportunities for the Authority to take a lead role in developing Strategic Innovation Centers that align with the ERF targeted industries or demonstrate that it will meaningfully support increasing diversity and inclusion within the State's entrepreneurial economy. This may arise as an opportunity for NJEDA to build and/or oversee the operations of the Strategic Innovation Center. In other cases, the locational decision related to the Strategic Innovation Center may entail collaborating with another party through an early investment that serves as a catalyst for the project. Staff time and small amounts of Strategic Innovation Center ERF funding may be dedicated to scope, develop, and assess these opportunities. Once Staff has sufficient validation that the proposed project presents a high-quality opportunity in accordance with the ERF factors and Staff has identified a delivery pathway, Staff will bring these projects to the Board for approval of the project and the corresponding budget. The FY2022 appropriation and other ERF funds may be sources of funding for the budget to develop or invest in such Strategic Innovation Centers. Examples of these types of projects might include the Authority's efforts related to implementing the New Brunswick Innovation Hub, expansion of the New Jersey Bioscience Center, development of an Infant and Maternal Health Center as part of First Lady Tammy Murphy's Nurture NJ initiative, or the development of a physical space for the Governor's Wind Institute.

The Authority already has experience directly delivering these types of Strategic Innovation Center projects. One example is the NJ Bioscience Center (NJBC) in North Brunswick, consisting of an incubator and step-out labs. The NJBC Incubator is one of the more significant incubation facilities in the nation dedicated to life sciences and biotechnology companies. Businesses located in the Incubator at North Brunswick have access to a variety of professional and support services and networking opportunities. Further, the NJBC Step-Out Labs provides a life sciences workplace environment for post incubation and rapidly growing biopharma companies.

Second, NJEDA Staff will consider unsolicited investment opportunities as Staff becomes aware of such opportunities. In most instances, these arise through receipt of unsolicited proposals for Strategic Innovation Centers that fit within the ERF targeted industries or demonstrate that it will meaningfully support increasing diversity and inclusion within the State's entrepreneurial economy. Authority Staff have historically received unsolicited proposals from various stakeholders to support innovation centers. These proposals have come from private for-profits, private not-for-profits, local government entities, and other State entities. In other cases, Staff may become aware of potential Strategic Innovation Centers through the regular course of promoting the State and investment and development in the State. While some proposals and potential investments could yield opportunities that would benefit the State and be a good fit for the Authority, the Authority has not had the framework to review and offer to invest in such projects. Given the recent specific appropriation for Strategic Innovation Centers (as described below), Staff is proposing the parameters below for review of such proposals and potential investments to ensure all current and future opportunities are reviewed equitably.

Because potential project opportunities are highly context specific, the appropriate structure for the investment for each Strategic Innovation Center will vary significantly. Therefore, instead of proposing specific types of investment, Staff proposes parameters to review proposals. Should Staff determine that a proposal or opportunity (1) qualifies as a Strategic Innovation Center in an ERF targeted industry or demonstrates that it will meaningfully support increasing diversity and inclusion within the State's entrepreneurial economy and (2) satisfies the parameters below, Staff will work with the relevant party to determine the appropriate investment approach in order to move forward into a fully defined investment and bring the investment to the Board for consideration on a first come first serve basis.

Framework for Reviewing Unsolicited Proposals or Investment Opportunities for Strategic Innovation Centers

NJEDA staff will review inbound unsolicited proposals on a rolling basis, including proposals that the Authority has already received. Staff may also review other investment opportunities if the initial information Staff is presented appears to demonstrate that the project would satisfy the criteria below. In both instances, Staff may determine that additional information is necessary. If so, Staff will request the information from the relevant party. NJEDA staff will then use the following evaluation criteria, which add more specificity to the above required factors and several additional criteria, to determine if an investment should be made based on an unsolicited opportunity. These evaluation criteria will also be used to drive the type and sizing of an investment opportunity for a given potential project. Justification for the type and sizing of an investment opportunity will be included as part of the selected project's submission to the Board for approval.

- The degree to which the project advances Statewide and/or regional strategies and objectives.
- The location of the project, where, at a minimum, the Strategic Innovation Center must be located in New Jersey.

- The degree to which the projects uniquely positions New Jersey to be a regional or national leader in one of the ERF targeted industries.
- Qualifications and experience of the entities that will be involved developing and operating the project, where partners with demonstratable experience executing similar projects in terms of approach or scale and size are significant factors for consideration.
- The level of support and quality of commitments from other entities, such as private sector corporations, academic partners, local non-profits, local government entities, etc.
- The project's development and operational readiness, where opportunities that can deliver an economic benefit quickly or are ready to be developed will be considered more highly.
- The economic feasibility of the project, such as:
 - Whether the project's business model is realistic and sustainable, with a sustainable model being one that will minimal further State assistance
 - Whether the project will be competitive given other existing innovation centers, companies and organizations in the locality, state, or region
 - Whether the quantity of financial support requested from the Authority is both reasonable for the scale of potential impact and adequate to achieve the projected outcomes
- The degree to which the project maximizes the leveraging of other sources of funding
- The degree to which the project promotes economic development, the creation or retention of jobs, and the stimulation of private sector investment and expansion.
- The degree to which the project will assist New Jersey-based businesses and entrepreneurs.
- The degree to which the project supports the State's ambition to strengthen its position as the most diverse and inclusive innovation ecosystem in the country, for example by providing opportunities to woman-, minority-, or veteran-owned business.
- The degree to which the project will engage with the local community and existing industries.
- The degree to which the project support development in historically underserved communities.
- The anticipated return of investment for NJEDA for the given investment structure.
- Any inter-state or inter-regional competitive dynamics of the project.

Proposal Review, Project Development, and Board Approval Process:

While Staff will not actively solicit proposals, moving forward, Staff will publish information about the Authority's consideration of unsolicited proposals for Strategic Innovation Center, a courtesy version of the above criteria, and basic contact information on the Authority's website.

Should Staff determine that an unsolicited proposal satisfies the above criteria and presents a high-quality opportunity, Staff will work directly with the submitter to further define the project as a potential investment opportunity for the Board's consideration. This engagement may entail activities such as responding to a competitive RFP or direct negotiations with the proposer.

Investment opportunities could take a variety of forms, including, but not limited to, joint ventures, real estate partnerships, operating partnerships, and equity investments. Where applicable, NJEDA will first look to use existing programs to support the Strategic Innovation Centers. If these existing programs alone are not sufficient to provide the most appropriate support for a given project, Staff will evaluate the proposal for an investment under this framework in this memorandum.

Entities with whom the Authority may enter into an agreement under this framework will be subject to all normal legal review, ethics review, State Ethics Commission approval (when required), good standing with the New Jersey Department of Environmental Protection and Department of Labor and Workforce Development, and tax clearance certificate verification from the Department of Treasury's Division of Taxation that are typical for projects progressed for the Board's consideration.

If the Board approves a partnership opportunity, Staff will seek to operationalize the partnership. This may involve additional direct negotiation, drafting of a partnership agreement, etc.

Fiscal Year 2022 State Appropriation

In the State's Budget for Fiscal Year 2022, the legislature appropriated \$55,000,000 to the NJEDA's Economic Recovery Fund (hereafter "ERF" or "the Fund") for the purpose of developing Strategic Innovation Centers.

Staff anticipate that the \$55,000,000 appropriated for the development of or investment in Strategic Innovation Centers will support at least 3-5 projects, with a mixture of NJEDA-led projects and investment opportunities. While each Strategic Innovation Center opportunity will be evaluated based upon its unique project characteristics, Staff anticipates that approved projects will generally require \$10,000,000 to \$20,000,000 of funding and that no single project would receive more than \$25,000,000.

Recommendation

The Members of the Board are requested to approve:

1. Policies for utilizing the Economic Recovery Fund to undertake development of or invest in strategic innovation centers to accelerate economic recovery and drive the long-term growth of the State's innovation economy; and
2. The use of the \$55 million appropriated in the 2022 State Budget in accordance with the policies.



Tim Sullivan, CEO

Prepared by: Alex Hydrean



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: July 14, 2021

SUBJECT: Approval of the Clean Energy Memorandum of Understandings (MOUs) - New Jersey Economic Development Authority (NJEDA) and New Jersey Board of Public Utilities (NJBP) and the New Jersey Economic Development Authority (NJEDA) and New Jersey Commission on Science, Innovation and Technology (NJCSIT)

SUMMARY

The Members are requested to approve the two Memorandum of Understanding (MOUs) between the (i) New Jersey Economic Development Authority (NJEDA) and the New Jersey Board of Public Utilities (NJBP) to provide funding of \$2,500,000 for support of the Clean Tech Seed Grant Program and expand the scope of the Clean Tech Research and Development (R&D) Voucher Program ("Clean Tech Programs") and (ii) between the New Jersey Economic Development Authority (NJEDA) and the New Jersey Commission on Science Innovation and Technology (NJCSIT) to allocate funding of \$2,375,000 to NJCSIT to deploy a second and expanded phase of the Clean Tech Programs.

BACKGROUND ON THE PREVIOUS MOUs

Governor Murphy's Energy Master Plan sets a goal of 100 percent clean energy by 2050 and outlines a strategy to expand the Clean Energy Innovation Economy in New Jersey. The Energy Master Plan sets a vision for New Jersey to build on its clean energy economy foundation to drive growth through workforce development, clean energy finance solutions, and investments in innovative research and development programs. The programs and initiatives supported by this funding will expand and strengthen New Jersey's Clean Energy Innovation Economy.

In September 2020, the NJEDA Board approved an MOU with the NJBP which enabled the NJBP to provide \$1,250,000 in funding (BP) Funds) to the NJEDA to support early-stage, New Jersey-based clean tech companies (BP) MOU). Given the early-stage nature of this ecosystem building activity and alignment with the role of CSIT, NJEDA executed this program in conjunction with the NJCSIT. In October 2020, NJEDA and NJCSIT entered into a MOU (NJCSIT MOU) to allocate \$1,187,500 of the BP) Funds to NJCSIT to support the development and operation of a \$750,000 Clean Tech Seed Grant Program and a \$435,000 Cleantech R&D Voucher Program. A 5% balance of the \$1,250,000 was retained by NJEDA to cover administrative, personnel, and overhead costs of running the programs.

SUMMARY OF THE CLEAN TECH PROGRAMS UNDER THE PREVIOUS MOUs

The Clean Tech Seed Grant Program was launched in January 2021 by NJCSIT, providing grants of up to \$75,000 to New Jersey-based early-stage clean tech/clean energy companies, to accelerate development and innovation of clean technologies to transform new discoveries from research stage into commercially viable technologies, leading to industry and investor interest. The application cycle closed in April 2021 and a total of twenty-nine applications were received with requested funding of \$750,000, out of which twenty-three were complete applications. After the review and scoring process, ten early stage clean tech companies were recommended for award funding (refer to Exhibit C) of \$748,000. Hence, there was an unmet market demand of 13 companies for \$975,000.

The Clean Tech R&D Voucher Program was launched in February 2021 by NJCSIT providing vouchers of up to \$15,000 to early-stage clean tech/clean energy companies in NJ to access core facilities, equipment and makerspaces at any participating NJ university or federal laboratory/facility for clean energy/clean tech research and development. The program was designed in collaboration with seven New Jersey universities that have core research facilities and instrumentation that could be made available to early-stage clean tech companies within the State. Applications are currently being accepted on a rolling basis until program funds run out. Through the writing of this memo, fourteen applications were received and seven are consistent with program eligibility criteria with a maximum funding requirement of up to \$105,000. Hence, there remains compacity under the original program funding of \$435,000.

PURPOSE OF THE NEW MOUs

The MOUs will provide funding to bolster NJEDA and NJCSIT's work in supporting early-stage, New Jersey-based cleantech companies. The funds will support these two specific Clean Tech Programs in coordination with NJCSIT:

- Launch second phase of the Clean Tech Seed Grant program aimed at helping New Jersey based early-stage clean tech/clean energy companies accelerate development and innovation of clean technologies to transform new discoveries from research stage into commercially viable technologies, leading to industry and investor interest. *(estimated budget is \$2,000,000);*
- Expand scope of the existing Clean Tech R&D Voucher Program intended to support early-stage clean tech/clean energy companies in NJ to access core facilities, equipment and makerspaces at any participating NJ university facilities or government labs for clean energy/clean technological research and development. *(estimated budget is \$375,000);*

NJEDA and NJCSIT staff intends to utilize the funding provided through the MOUs as quickly as possible, with the objective of having the monies fully committed via established programs no later than year-end 2022. NJEDA will transfer funding in the amount of \$2,375,000 to NJCSIT to implement the Clean Tech Programs with NJEDA providing input on the program design and administration which will be subject to the NJCSIT Board approval. NJCSIT staff, utilizing input from NJEDA, intends to utilize the additional funding of \$2,375,000 provided by NJBPU as quickly as possible, with the objective of having the monies fully committed via a second phase of the Clean Tech Programs no later than year-end 2022. Based on past experience, the attach documents also contemplate the NJEDA utilizing up to 5% of the \$2,500,000 to support the administrative, personnel, and overhead costs of running the programs jointly with NJCSIT and as such NJEDA will not bill NJCSIT for staff support under these two programs. This will be a one-time cost utilizing the initial \$2,500,000 of funding and not an annual charge.

The estimated budgets above are indicative and not final. The NJCSIT Executive Director in consultation with NJEDA has the ability to re-allocate funding between the two Clean Tech Programs based on Program demand. The BPU MOU includes requirements for NJEDA staff to engage and update the NJBPU staff quarterly to provide an update on the status of these programs and initiatives. The NJCSIT MOU includes requirements for NJCSIT staff to regularly engage and update NJEDA staff on the status of these programs and initiatives.

RECOMMENDATION

It is the recommendation of Authority staff that the Members approve the Memorandum of Understanding (MOUs) between the (i) New Jersey Economic Development Authority (NJEDA) and the New Jersey Board of Public Utilities (NJBPU) to provide funding of \$2.5 million for support of the Clean Tech Seed Grant Program and expand the scope of the Clean Tech Research and Development (R&D) Voucher Program (“Clean Tech Programs”) and (ii) between the New Jersey Economic Development Authority (NJEDA) and the New Jersey Commission on Science Innovation and Technology (NJCSIT) to allocate funding of \$2,375,000 million to NJCSIT to deploy a second and expanded phase of the Clean Tech Programs.



Tim Sullivan, CEO

Prepared by: Fatou Jobe

Attachments:

- Exhibit A – Proposed Memorandum of Understanding between NJBPU and NJEDA
- Exhibit B – Proposed Memorandum of Understanding between NJEDA and NJCSIT
- Exhibit C – Description of Clean Tech Seed Grant Awardees

Exhibit A

CLEAN ENERGY AND CLEAN TECH INNOVATION
MEMORANDUM OF UNDERSTANDING
BETWEEN THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY AND
THE NEW JERSEY BOARD OF PUBLIC UTILITIES

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

WHEREAS, the NJEDA is an independent state agency, in but not of the Department of Treasury, that serves as the state’s principal agency for driving economic growth and is committed to making New Jersey a national model for inclusive and sustainable economic development by focusing on key strategies to help build strong and dynamic communities, create good jobs for New Jersey residents, and provide pathways to a stronger and fairer economy; and regulated utilities, including the development of clean, renewable sources of energy; and

WHEREAS, the NJEDA has an existing Memorandum of Understanding related to entrepreneurial program development and execution with the New Jersey Commission on Science, Innovation, and Technology (“NJ CSIT”), an independent commission, in but not of Treasury, that focuses supporting early state entrepreneurship and innovation ecosystem building within the State; and

WHEREAS, the NJBP is the state agency with authority to oversee the general supervision, regulation, jurisdiction, and control over public utilities in the State, including electric utilities and their rates and service. The law requires the NJBP to ensure safe, adequate, and proper utility services at reasonable rates for customers in New Jersey; and through the NJBP Division of Clean Energy (“DCE”), promotes energy efficiency programs and the development of clean, renewable sources of energy including solar, wind, geothermal, combined heat and power (“CHP”) and sustainable biomass. The goal of the DCE is to lower energy costs, reduce demand for electricity, emit fewer pollutants into the air and create jobs. Through its programs, the DCE offers education, outreach and financial incentives to residential, commercial businesses and industry, schools and governmental customers; and

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

WHEREAS, the 2019 Energy Master Plan recognizes that supporting clean energy and clean tech innovation aligns with two of the Administration’s top priorities of:

- i. Ensuring that New Jersey achieves 100% carbon free electricity and an 80% carbon footprint reduction by 2050, while simultaneously addressing long-standing environmental justice issues; and
- ii. Restoring New Jersey’s leadership as the most diverse and inclusive innovation ecosystem in the United States (“New Jersey’s Clean Energy and Clean Tech Ecosystem”); and

WHEREAS, the NJEDA and NJBP have a history of partnering with each other in the furtherance of clean energy and clean tech innovation and the Parties agree that this MOU will advance implementation of the statewide 2019 Energy Master Plan; and

WHEREAS, the NJBP has agreed to provide the NJEDA with \$2.5 million in Clean Energy funding to execute the second phase of the Clean Tech Seed Grant Program and expand the scope of the Clean Tech R&D Voucher Program (“Clean Tech Programs”) that will strengthen the state’s Clean Energy and Clean Tech Ecosystem and encourage the continued development and growth of the green workforce and economy focusing on innovation; and

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

NOW, THEREFORE, it is agreed between NJEDA and NJBPU:

1. DUTIES OF THE PARTIES: To achieve the goals of this MOU, the Parties hereby agree as follows:
 - a. NJBPU will provide to NJEDA \$2.5 million in Clean Energy and Clean Tech funding upon execution of this MOU.
 - b. NJEDA will utilize this funding to execute the Clean Tech Programs, in conjunction with the NJ CSIT, that support the growth and development of New Jersey's Clean Energy and Clean Tech Ecosystem. Specifically, the funds will support the following Clean Tech Programs:
 - i. Launch second phase of the Clean Tech Seed Grant Program to help New Jersey-based early-stage clean tech/clean energy companies accelerate development and innovation of clean technologies to transform new discoveries from research stage into commercially viable technologies, leading to industry and investor interest. Given the early-stage nature of this ecosystem building activity, NJEDA will execute this program in conjunction with the NJ CSIT. While the NJEDA will work to launch the second phase of this Program at the earliest, NJEDA anticipates the second phase of the Clean Tech Seed Grant Program to launch by no later than December 31st, 2021 and disburse all funds by December 31st, 2022. NJEDA and NJ CSIT may make amendments to the Program design and scope of work for this Program with written consent by NJBPU President.
 - ii. Expand scope of the Clean Tech R&D Voucher Program to help early-stage clean tech/clean energy companies in NJ to access core facilities, equipment and makerspaces at participating NJ university or federal laboratory/facility for clean energy/clean technological research and development. NJEDA may partner with the NJ CSIT on this initiative. While the NJEDA will work to launch this Program at the earliest, NJEDA anticipates the second phase of the Clean Tech R&D Voucher Program to launch by no later than December 31st, 2021 and disburse all funds by December 31st, 2022. NJEDA and NJ CSIT may make amendments to the Program design and scope of work for this Program only with written consent by NJBPU President.
 - c. NJEDA will provide to NJBPU quarterly updates on the use of funds.
 - d. If NJEDA chooses to not undertake the Clean Tech Programs by its target date of December 31st, 2022, NJEDA shall notify the NJBPU and may propose amendments to this MOU.
 - e. NJEDA may undertake the Clean Tech Programs with the assistance of consultants or contractors retained by NJEDA.
2. TERM: This MOU shall become effective on the date it is fully executed by both Parties. This MOU, unless terminated sooner as set forth in Paragraph 9, shall remain in effect for (5) years from the execution of this MOU.
3. ADMINISTRATION FEE: NJEDA may utilize up to 5% of the \$2.5 million to support the administrative, personnel, and overhead costs of running the programs. This will be a one-time cost utilizing the initial \$2.5 million of funding and not an ongoing obligation
4. SUBJECT TO THE AVAILABILITY OF FUNDING: The funding that NJBPU will provide under this MOU is subject to appropriations and the availability of funds.
5. THIRD-PARTY BENEFICIARIES: This MOU shall not create in any individual or entity the status of a third-party beneficiary and nothing in this MOU shall be construed to create such status.
6. ASSIGNMENT: This MOU shall not be assignable, except for the NJEDA's ability to partner and/or assign their responsibilities to NJ CSIT but shall bind and inure to the benefit of the Parties hereto and their respective successors.
7. ADMINISTRATION: Administration of this MOU shall be governed by the written agreements reached by the NJ BPU President and NJEDA CEO.

8. DISPUTE: If there are any disputes among the Parties concerning this MOU, the President of NJBPU and the CEO of NJEDA, or their authorized representatives, shall confer to resolve the dispute.
9. AMENDMENT: This MOU represents the entire and integrated agreement between the Parties and supersede any and all prior agreements or understandings. This MOU may be amended by written agreement of the Parties.
10. TERMINATION: Either party may terminate this MOU upon service on the other party of written notice giving at least 90 days written notice of such intention to terminate. In the event of termination, the Parties agree to conduct a final accounting within 90 days of the termination effective date.
11. NOTICE: All correspondence and notices to NJBPU regarding this MOU shall be addressed to the following person or his/her delegate or replacement:

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

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

Pallavi Madakasira
Director, Clean Energy Sector Lead
New Jersey Economic Development Authority
36 West State Street, PO Box 990, Trenton, NJ 08625

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

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

For the Economic Development Authority:
Development:

For the Board of Public Utilities:

Tim Sullivan
Chief Executive Officer

Joseph L. Fiordaliso
President

DATE

DATE

Exhibit B

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

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made this _____ day of August 2021 by and between the New Jersey Economic Development Authority (“NJEDA”) and the New Jersey Commission on Science, Innovation, and Technology (“NJ CSIT”). The NJEDA and the NJ CSIT are collectively referred to herein as the “Parties.”

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

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

WHEREAS, the 2019 Energy Master Plan recognizes that supporting clean energy and clean tech innovation aligns with two of the Administration’s top priorities of:

- i. Ensuring that New Jersey achieves 100% carbon free electricity and an 80% carbon footprint reduction by 2050, while simultaneously addressing long-standing environmental justice issues; and
- ii. Restoring New Jersey’s leadership as the most diverse and inclusive innovation ecosystem in the United States (“New Jersey’s Clean Energy and Clean Tech Ecosystem”); and

WHEREAS, the New Jersey Board of Public Utilities (NJBPBU) and the NJEDA entered into an MOU on September 9th, 2020 (“Initial NJBPBU MOU”) wherein NJBPBU provided the NJEDA with one million, two hundred and fifty thousand dollars (\$1,250,000.00) in Clean Energy funding (“Initial NJBPBU Funds”) to execute programs that strengthen the State’s Clean Energy and Clean Tech Ecosystem and encourage the continued development and growth of the green workforce and economy focusing on innovation; and

WHEREAS, the NJEDA and NJCSIT entered into an MOU on October 14, 2020 (“Initial Cleantech Funding MOU”) wherein the NJEDA provided the Initial NJBPBU Funds to the NJ CSIT in order to establish and execute programs that support the growth and development of New Jersey’s clean energy and clean tech ecosystem and the NJCSIT established the Clean Tech Seed Grant Program, and the Clean Tech Voucher Program; and

WHEREAS, P.L. 2018, c.91 re-established NJ CSIT as an independent commission, in but not of Treasury, charging NJCSIT with responsibility for the development and oversight of policies and programs for science, innovation, and technology in New Jersey, among other duties and authorities; and

WHEREAS, NJEDA has the technical expertise and capacity to support the NJ CSIT’s activities and the NJEDA will provide office staff, office space, and support services to assist NJ CSIT in carrying out the responsibilities identified in P.L. 2018, c.91 pursuant to the Existing NJ CSIT MOU; and

WHEREAS, NJBPU and the NJEDA entered into an MOU on July, _____, 2021 (“Current NJBPU MOU”) wherein NJBPU provided the NJEDA with two million, three hundred and seventy-five thousand dollars (\$2,375,000.00) in Clean Energy funding (“New NJBPU Funds”) to execute programs that strengthen the State’s Clean Energy and Clean Tech Ecosystem and encourage the continued development and growth of the green workforce and economy focusing on innovation; and

WHEREAS, the NJEDA will provide the New NJBPU Funds (\$2,375,000.00) to NJ CSIT in order to execute a second phase of the Clean Tech Seed Grant Program and the Clean Tech R&D Voucher Program (“Clean Tech Programs”) that strengthen the state’s Clean Energy and Clean Tech Ecosystem and encourage the continued development and growth of the green workforce and economy focusing on innovation; and

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

1. DUTIES OF THE PARTIES: To achieve the goals of this MOU, the Parties hereby agree as follows:
 - a. NJEDA will transfer the New NJBPU Funds of \$2,375,000.00 to NJ CSIT to accomplish the goals of the Current NJBPU MOU
 - b. NJEDA shall retain 5% of the New NJBPU Funds, consistent with the Current NJBPU MOU, to be used for administrative personnel and overhead costs. Additionally, NJEDA will not charge NJ CSIT separate and additional costs for staff time and resources for NJ CSIT Programs funded by the New NJBPU Funds.
 - c. NJ CSIT will use the New NJBPU Funds in the manner consistent with the Current NJBPU MOU to support the growth and development of New Jersey’s Clean Energy and Clean Tech Ecosystem. Specifically, the New NJBPU Funds will support the following Clean Tech Programs:
 - i. Launch second phase of the Clean Tech Seed Grant Program to help New Jersey-based early-stage clean tech/clean energy companies accelerate development and innovation of clean technologies to transform new discoveries from research stage into commercially viable technologies, leading to industry and investor interest. Given the early-stage nature of this ecosystem building activity, NJ CSIT will execute this program with input from NJEDA. Consistent with the timing outlined in the Current NJBPU MOU, NJ CSIT will work to launch the second phase of this Program at the earliest, NJ CSIT anticipates the second phase of the Clean Tech Seed Grant Program to launch by no later than December 31st, 2021 and disburse all funds by December 31st, 2022. NJEDA and NJ CSIT may make amendments to the Program design and scope of work for this Program only with written consent by NJBPU President.
 - ii. Expand scope of the Clean Tech R&D Voucher Program to help early-stage clean tech/clean energy companies in NJ to access core facilities, equipment and makerspaces at participating NJ university or federal laboratory/facility for clean energy/clean technological research and development. NJ CSIT will execute this program with input from NJEDA. Consistent with the timing outlined in the amended NJBPU MOU, NJ CSIT will work to launch this Program at the earliest, NJ CSIT anticipates the second phase of the Clean Tech R&D Voucher Program to launch by no later than December 31st, 2021 and disburse all funds by December 31st, 2022. NJEDA and NJ CSIT may make amendments to the Program design and scope of work for this Program only with written consent by NJBPU President.
 - d. NJ CSIT will provide to NJEDA quarterly updates on the use of funds.
 - e. NJ CSIT in consultation with NJEDA has the ability to re-allocate funding between the two Clean Tech Programs based on Program demand.

- f. If NJ CSIT anticipates it will not be able to undertake the Clean Tech Programs and utilize the NJBPU Funds by its target date of December 31st, 2022, NJ CSIT shall notify the NJEDA and may propose amendments to this MOU.
 - g. If the NJ CSIT has not disbursed the funds by December 31st, 2022, or executed an appropriate amendment by that date, the NJ CSIT shall promptly remit any outstanding NJBPU Funds to the NJEDA
 - h. NJ CSIT may undertake the Clean Tech Programs with the assistance of consultants or contractors retained by NJ CSIT.
2. TERM: This MOU shall become effective on the date it is fully executed by both Parties. This MOU, unless terminated sooner as set forth in Paragraph 7, shall remain in effect for five (5) years from the execution of this MOU.
3. SUBJECT TO THE AVAILABILITY OF FUNDING: The funding that NJEDA will provide under this MOU is subject to appropriations and the availability of funds from NJBPU.
4. THIRD-PARTY BENEFICIARIES: This MOU shall not create in any individual or entity the status of a third-party beneficiary and nothing in this MOU shall be construed to create such status.
5. DISPUTE: If there are any disputes among the Parties concerning this MOU, the Chair of NJ CSIT and the CEO of NJEDA, or their authorized representatives, shall confer to resolve the dispute.
6. AMENDMENT: This MOU represents the entire and integrated agreement between the Parties and supersede any and all prior agreements or understandings. This MOU may be amended by written agreement of the Parties.
7. TERMINATION: Either party may terminate this MOU upon service on the other party of written notice giving at least 90 days written notice of such intention to terminate. In the event of termination, the Parties agree to conduct a final accounting within 90 days of the termination effective date and to return any unused funds to NJEDA.
8. NOTICE: All correspondence and notices to NJ CSIT regarding this MOU shall be addressed to the following person or his/her delegate or replacement:

Judith Sheft
Executive Director
New Jersey Commission on Science, Innovation and Technology
36 West State Street, PO Box 990, Trenton, NJ 08625

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

Pallavi Madakasira
Director, Clean Energy Sector Lead
New Jersey Economic Development Authority
36 West State Street, PO Box 990, Trenton, NJ 08625

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

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

For the Economic Development Authority:
Technology:

For the Commission on Science, Innovation and

Tim Sullivan
Chief Executive Officer

Gunjan Doshi
Chair

DATE

DATE

Exhibit C

DESCRIPTION OF CLEAN TECH SEED GRANT AWARDEES

Arbela Laboratories	Arbela Labs is an early stage company focused on increasing the scale and reducing the costs of biomanufacturing using its methanol-fed <i>Pichia</i> platform and end-to-end systems engineering. Their goal is to economically produce proteins and other biomolecules for customers at unprecedented volume while enabling a revolution in protein production for human and animal nutrition without the environmental downside of current practices.
Andluca Technologies Inc	Andluca Technologies is a spin-out of Princeton University that aims to significantly reduce the energy use of existing buildings via solar-powered smart glass systems. The Andluca team has shepherded an R&D breakthrough - transparent ultraviolet solar films for smart windows - from university discovery to granted US patent to pilot integration with electrochromic glazing.
Eion NJ Corp	Eion Corp is developing a specialty fine-grained mineral material that rapidly captures and stores CO ₂ when applied to agricultural soils. They've identified a unique strategy that has low startup and marginal costs, is permanent, verifiable, and certified organic. Their innovation is use of chemical tracers to verify the CO ₂ drawdown for trading securitized carbon credits.
Farm to Flame Energy	Farm to Flame Energy provides scalable, end-to-end electricity generation systems for communities in underdeveloped countries. They are developing portable generators that utilize agricultural and residential wastes in a smokeless and carbon neutral process to provide power.
Green Blu	GreenBlu solves the toughest challenges facing desalination and wastewater, which are high electricity use and liquid waste discharge. GreenBlu's go-anywhere, modular, containerized distillers and ZLD crystallizers are highly efficient, cost-competitive, and completely changes the economics of waste brine by monetizing dissolved solids. Their vapor adsorption distillation cycle powered by waste or solar heat achieves low operating cost by not using membranes and minimizing electricity use.
NextGen Battery Technologies, LLC	NextGen Battery Technologies are developing a high-voltage, non-flammable solid-state electrolyte for lithium batteries that will enable greater safety, higher capacity (though its compatibility with lithium anodes), and lower cost. It will be compatible with existing battery material manufacturing procedures and automated battery component coating and system manufacturing plants.
Princeton NuEnergy	Princeton NuEnergy's mission is to create new solutions in renewable energy, alternative fuels, and environmental protection by generating novel processes and materials. Their current focus is on second-life battery solutions and closed-loop lithium-ion battery recycling to solve the issues of high cost and chemical pollution which traditional battery recycling methods suffer from.
RenewCO₂, LLC	RenewCO₂ is designing and developing technologies and equipment for the direct reduction of carbon dioxide into chemicals such as plastics precursors. Their technology uses only CO ₂ , electricity from sources such as wind and solar, and water as the feedstock yielding plastics with an overall negative CO ₂ footprint.
SunRay Scientific, LLC	SunRay Scientific Inc. has pioneered and is bringing to market an environmentally clean electrical connection technology. The simplicity of SunRay's technology lowers production costs while speeding up production time, enabling bringing electronics manufacturing back to the USA. New generation customized conductive inks and epoxies address challenges of silver migration to allow for finer printing of printed electronics.
WeSolar CSP Inc	WeSolar CSP designs and builds scalable and modular Concentrated Solar Power (CSP) plants for energy and heating solutions for: Government, Utilities, Corporations, Industry, and Community/Micro-grids. Their system can generate 24 hours of electricity by employing long duration storage technology and enables high-temperature applications like green hydrogen production and process heat.



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: July 14, 2021

Subject: Offshore Wind Sector Initiatives Memorandum of Understanding (MOU)
– New Jersey Economic Development Authority (NJEDA) and New Jersey Board of Public Utilities (NJBPU)

Summary:

Members of the Board are requested to approve a Memorandum of Understanding (MOU) (Appendix A) in substantially final form between the New Jersey Economic Development Authority (NJEDA) and the New Jersey Board of Public Utilities (NJBPU). This MOU enables the NJBPU to provide \$7 million in funding to the NJEDA to support the development and delivery of workforce training, education, research and innovation programs that will empower New Jerseyans to participate in the offshore wind industry. There are critical workforce and innovation development needs in offshore wind, as outlined in a [report](#) released by the Governor's Wind Council with the recommendation to establish a Wind Institute to coordinate these developments in the State. The Wind Council's primary recommendations were for the Wind Institute to 1) act as a centralized hub for offshore wind workforce development and 2) champion research and innovation that unlocks market potential. This MOU will support programs that, as a precursor to establishing a Wind Institute will help New Jersey to achieve its offshore wind goals while also creating new opportunities for New Jersey workers.

Background:

Governor Murphy has established clear and aggressive clean energy goals, including generating 7.5 GW of electricity from offshore wind energy by 2035 as part of the State's plan to transition to 100 percent clean energy by 2050. To successfully reach these goals, New Jersey must invest in and coordinate workforce training, education, research, and innovation efforts. Through Executive Order 79, the Governor established the Wind Council, a cross-governmental effort to develop a plan for creating the Wind Institute, which will serve as a center for education, research, innovation and workforce training related to the development of offshore wind in New Jersey and the Northeast and Mid-Atlantic region.

With \$4.5 million of support from the NJBPU Clean Energy Fund, the NJEDA has already made advancements in offshore wind workforce training, including by launching two programs:

- \$3 million for an Offshore Wind Safety Training Challenge, which will establish a Global Wind Organization (GWO) certified training facility in New Jersey.

- \$1 million for an Offshore Wind Turbine Technician Training Challenge, which will establish a new certificate program at a New Jersey community college with a pathway to an Associate degree.

Funding from the initial MOU also supports administrative costs and stakeholder engagement activities. This MOU will enable NJBPU to provide an additional \$ 7million to NJEDA to further expand efforts to advance offshore wind workforce training, education, research and innovation.

MOU Description:

The MOU will provide \$7 million in funding to support the NJEDA to launch workforce development, education, research and innovation solutions that will enable New Jerseyans to participate in the offshore wind industry. The funding will support:

- Workforce and education programs that address key challenges and expand stakeholder engagement and understanding about workforce needs and opportunities. Programs will include overseeing grant challenges to New Jersey training providers in key skills gap areas such as welding, marine transport, offshore wind power engineering and/or environmental surveying and monitoring (the particular workforce focus areas will be determined as part of the program development process). Funding will also support the development of an offshore wind module to be included as part of STEM concentrations at New Jersey vocational schools, offshore wind seminars and other engagement activities for businesses and other stakeholders interested in furthering offshore wind workforce development with a particular focus on driving diversity, equity and inclusion, and a workforce skills assessment to ascertain additional workforce development priority areas. *(Estimated budget is \$4.8 million)*
- Research and innovation programs that leverage New Jersey's higher education institutions' assets and expertise to spearhead research and innovation that unlocks market potential and/or specifically addresses challenges facing New Jersey's offshore wind industry. Funding will support the establishment of a local consortium of New Jersey research institutions to support offshore wind research and scholarships for women, people of color and low-income students pursuing degrees in offshore wind related disciplines. Additional programming will support an industry-sponsored grant challenge with public matching funds to drive innovative research and development in the private sector. *(Estimated \$1.3 million)*
- Administrative staffing costs to support the launch of the Wind Institute and to position the Wind Institute as a centralized information hub for offshore wind workforce development, education, research, and innovation. *(Estimated \$625,000)*
- Other operational needs including a space assessment and early development costs for a physical location for the Wind Institute, as well as costs for website development, events, marketing, etc. *(Estimated \$170,000)*

These programs are subject to NJEDA Board approval and NJEDA may shift the funds among the different categories, with the exception of capping the administrative staffing costs at \$625,000.

NJEDA staff intends to utilize the funding provided through the MOU as timely as possible, with the objective of having the monies committed to identified programs no later than June 30, 2022.

The MOU includes requirements for the NJEDA staff to regularly engage and provide the NJBPU staff quarterly updates on the status of these programs and initiatives.

Recommendation:

The Members of the Board are requested to approve the MOU in substantially final form between the NJEDA and the NJBPU, attached as Appendix A, to provide \$7 million in funding to NJEDA to establish programs to prepare New Jersey's workforce and further research and innovation in the offshore wind industry.



Tim Sullivan, CEO

Prepared by: Jen Becker, Managing Director, Wind Institute Development

Appendix A: Memorandum of Understanding Offshore Wind Sector Initiatives - New Jersey Economic Development Authority and New Jersey Board of Public Utilities

Appendix A

MEMORANDUM OF UNDERSTANDING
BETWEEN THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY AND THE
NEW JERSEY BOARD OF PUBLIC UTILITIES

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

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

WHEREAS, the NJBP general supervision, regulation, jurisdiction, and control over all public utilities in the State, including electric utilities and their rates and service. The law requires the NJBP to ensure safe, adequate, and proper utility services at reasonable rates for customers in New Jersey; and through the NJBP Division of Clean Energy (“DCE”), promotes energy efficiency programs and the development of clean, renewable sources of energy including solar, wind, geothermal, combined heat and power (“CHP”) and sustainable biomass. The goal of the DCE is to lower energy costs, reduce demand for electricity, emit fewer pollutants into the air and create jobs. Through its programs, the DCE offers education, outreach and financial incentives to residential, commercial businesses and industry, schools and governmental customers; and

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

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

WHEREAS, Governor Murphy signed Executive Order No. 79 to establish a Wind Innovation and New Development (“WIND”) Council to develop a plan to create the WIND Institute; and

WHEREAS, on April 22, 2020, the WIND Council released its report and recommendation for the creation of the WIND Institute to coordinate and galvanize cross-organizational workforce and innovation efforts to position New Jersey as a leader in offshore wind and articulated priorities to support this goal; and

WHEREAS, the NJEDA and NJBP have a history of partnering with each other in the furtherance of offshore wind economic development and the Parties agree that this MOU will advance implementation of the statewide 2019 Energy Master Plan by progressing against the priorities outlined in the WIND Council’s report; and

WHEREAS, the NJBPU has agreed to provide the NJEDA with \$7 million to support NJEDA efforts to develop and deliver programs that will empower New Jerseyans to participate in the offshore wind industry; and

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

NOW, THEREFORE, it is agreed between NJEDA and NJBPU:

1. DUTIES OF THE PARTIES: To achieve the goals of this MOU, the Parties hereby agree as follows:
 - a. NJBPU will provide to NJEDA \$7 million in funding upon execution of this MOU.
 - b. NJEDA will dedicate the funds to support the following proposed offshore wind sector initiatives that it will undertake ("Proposed Programs"), as part of the development of the Wind Institute:
 - i. Continued development and execution of workforce and education programs. Programs can include overseeing grant challenges to NJ training providers in key skills gap areas including welding and other areas such as marine transport, offshore wind marshalling, offshore wind power engineering and environmental surveying and monitoring (the particular workforce focus areas will be determined as part of the program development process), supporting the development of an offshore wind module at NJ vocational schools, hosting offshore wind seminars and other engagement activities for businesses and other stakeholders interested in furthering offshore wind workforce development, and conducting a skills assessment to ascertain additional workforce priority areas;
 - ii. Development and execution of programs that spearhead research and innovation that unlocks market potential and/or specifically addresses challenges facing New Jersey's offshore wind industry. Programs include establishing a local consortium of New Jersey research institutions to support offshore wind research and scholarships for women, people of color and low-income students pursuing degrees in offshore wind related disciplines and launching an industry-sponsored grant challenge with public matching funds to drive innovative research and development in the private sector;
 - iii. Administrative staffing costs to support the launch of the Wind Institute and to position the Wind Institute as a centralized information hub for offshore wind workforce development, education, research and innovation; and
 - iv. Other operational needs including a space assessment and early development costs for a physical location for the Wind Institute, as well as costs for website development, events, marketing, etc.
 - c. NJEDA has not proposed detailed parameters or specifications for any of the Proposed Programs and may shift funds among the categories, with the exception of a cap of \$625,000 for administrative staffing costs. If NJEDA chooses to not undertake the Proposed Programs, NJEDA shall notify the NJBPU and may propose amendments to this MOU. The NJBPU may also

- propose amendments to the Proposed Programs.
- d. NJEDA may, in its discretion, undertake the Proposed Programs with the assistance of consultants or contractors retained by NJEDA.
 - e. NJEDA staff will, at least quarterly, update and seek input from NJBPU staff on the work plan, development progress, and the drafting of program documents, including, but not limited to, solicitations, request for qualifications/proposals, guidelines/specifications, working group scope, and seminar materials, around the Proposed Programs. These updates shall be timely provided by NJEDA separate from the quarterly updates described in Section 1.f. The first update shall be provided within 90 days of this MOU's effective date.
 - f. NJEDA will provide to NJBPU quarterly updates on the use of funds and fund balances.
2. **TERM:** This MOU shall become effective on the date it is fully executed by both Parties and shall continue for a period of five (5) years. This MOU may be extended only by prior written agreement by the Parties. At the expiration of the MOU, NJEDA will return any unused NJBPU funds remaining after all costs, direct or indirect, incurred by NJEDA have been paid.
 3. **SUBJECT TO THE AVAILABILITY OF FUNDING:** The funding that NJBPU will provide under this MOU is subject to appropriations and the availability of funds.
 4. **THIRD-PARTY BENEFICIARIES:** This MOU shall not create in any individual or entity the status of a third-party beneficiary and nothing in this MOU shall be construed to create such status.
 5. **ASSIGNMENT:** This MOU shall not be assignable, except for the NJEDA's ability to partner and/or assign their responsibilities to the NJ Wind Institute upon its establishment, but shall bind and inure to the benefit of the Parties hereto and their respective successors.
 6. **AMENDMENT:** This MOU may be amended, extended, supplemented, changed, modified or altered only by mutual agreement of the NJBPU President and NJEDA CEO in writing.
 7. **TERMINATION:** Either party may terminate this MOU upon service on the other party of written notice giving at least 90 days written notice of such intention to terminate. In the event of termination, the Parties agree to conduct a final accounting within 90 days of the termination effective date.
 8. **NOTICE:** All correspondence and notices to NJBPU regarding this MOU shall be addressed to the following person or his/her delegate or replacement:

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

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

Jen Becker
Managing Director, Wind Institute Development
New Jersey Economic Development Authority
36 West State Street, PO Box 990, Trenton, NJ 08625

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

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

For the Economic Development Authority:

For the Board of Public Utilities:

Tim Sullivan
Chief Executive Officer

Joseph L. Fiordaliso
President

DATE

DATE

PORT INFRASTRUCTURE



TO: Members of the Authority

FROM: Tim Sullivan

DATE: July 14, 2021

SUBJECT: New Jersey Wind Port – Award of Construction Manager at Risk (CMAR) contract & Issuance of a Notice to Proceed (NTP) for Phase One Preconstruction Services

REQUEST

The Members of the Board are asked to approve the selection of Tishman Construction Corporation of New Jersey (“AECOM Tishman”) as the Authority’s Construction Manager at Risk (CMAR) for the New Jersey Wind Port (NJWP) project.

Members are also asked to approve an initial budget of \$150,000, which will be used for the first Notice to Proceed (NTP) for Phase one preconstruction services.

BACKGROUND

Delivery method selection

In early 2020, as part of the NJWP’s business case development, the Authority evaluated potential financing and delivery methods. This assessment, which drew on the expertise of the Authority’s financial and commercial advisor, Ernst & Young Infrastructure Advisors (EYIA), and technical advisor, WSP USA (WSP), identified public financing and the Construction Manager at Risk (CMAR) method as the optimal form of delivery given project specifics and Authority’s procurement capabilities. Method selection considered:

- Schedule benefits, specifically the ability to commence and complete the first phase of the project sooner, which would best position New Jersey to attract offshore wind developers and supply chain partners to the State
- The Authority’s direct experience with (and track record of success in using) the CMAR method on large projects, including for the state office buildings
- The ability for the Authority to retain greater control over project design, which is important in this case given the evolving nature of offshore wind industry needs
- The greater value for money that the CMAR method permits through an appropriate allocation of risk between the Authority and CMAR, including the opportunity to transfer price and schedule risk through a Guaranteed Maximum Price (GMP)

Staff intends capitalizing all costs incurred under the CMAR contract, alongside all other external project costs and staff time, into the development of the NJWP project. The Project will draw on a mix of state appropriations and other public funding, as well as supplementary public financing.

Following the Governor's announcement of the NJWP in June 2020 the Authority began mobilizing towards procuring a CMAR, with this process outlined in further detail below.

Two-step procurement

In accordance with the Authority's existing policies, a two-step procurement process was initiated. Because the value of the contract was anticipated to exceed the threshold for Office of the State Comptroller (OSC) review, the procurement documents were reviewed and approved by the OSC before documents were issued.

As a first step, a Request for Qualifications (RFQ) was issued on November 30, 2020. In response, eight (8) qualification statements were received and publicly opened by virtual link on January 5, 2021. Qualification statements were reviewed for responsiveness with one firm deemed disqualified. An Evaluation Committee comprising qualified staff was selected prior to RFQ issuance. Following completion of responsiveness checks the Committee convened to review and score submitted qualifications for the seven (7) responsive firms. On the basis of the evaluation criteria outlined in the RFQ, the Committee recommended that the top five (5) ranked firms be short-listed to receive a Request for Proposal (RFP), including:

- AECOM Tishman
- Burns & McDonnell
- Hunter Roberts Construction Group
- Kiewit Infrastructure Co.
- Turner Construction Company

On April 7, 2021, the Authority issued a Request for Proposals (RFP) to the five short-listed firms. A Question and Answer (Q&A) period was held until April 28, 2021, with the Authority issuing an addendum and revised bid documentation. Due to the volume of questions received, the period for submitting proposals was extended to June 9, 2021.

The Authority received proposals from three (3) of the short listed firms. Two (2) short-listed firms declined to submit proposals. An Evaluation Committee, comprising qualified staff selected prior to RFP issuance, was convened to score proposals; with the Authority's Chief Diversity and Inclusion Officer serving as an expert advisor (non-voting member) to the Committee. Proposals were scored on the basis of price and non-price criteria. Price was automatically scored with the lowest CM fee proposal scoring 30 points, the next lowest 20 points and third lowest 10 points; with preconstruction scored on a similar tiered basis. For non-price criteria, the Committee assessed:

- Ability to execute the project scope, as demonstrated by:
 - o Understanding of the Port development scope;
 - o Project and management approach to delivering on the scope of services;
 - o Quality control and safety plans; and

- Based on a prior disparity study conducted by the Authority, plan to award fifteen percent (15%) of subcontracts to minority-, women-, veteran-owned business enterprises (MWVBES) and disadvantaged business enterprises (DBEs).
- Experience of key project staff relative to projects of similar size, scope, and complexity;
- Firm-level experience relative to projects of similar size, scope, and complexity, as demonstrated by:
 - Specialized firm-level experience in construction of projects where budget and schedules are primary considerations;
 - Experience as a CM offering Construction Services on similar projects;
 - Experience as a CM offering Preconstruction Services (scheduling, cost estimating, value engineering, etc.) on projects of similar size, scope and complexity;
 - Experience engaging with local, state, and federal agencies for plan review, permitting, and construction inspections on projects of similar size, scope, and complexity; and
 - Experience in structuring efforts to meet small business enterprise (SBE) and similar goals on similar projects, and in following its firm-level efforts and plans around increasing diversity and inclusion in terms of subcontractors and its own employees.

Diversity & inclusion

Recognizing that diversity and inclusion is core to the Authority's overall delivery approach for the NJWP, and wider OSW industry development, a demonstrable capacity and plan to achieve diversity and inclusion goals was a key component of CM selection, alongside the other factors outlined in the RFQ and RFP. In particular, this recognizes the Project's stated goal to award:

- A minimum of fifteen percent (15%) of the total construction value to subcontractors, equipment lessors and/or material suppliers that are certified as MWVBE or DBE; and
- A minimum of three percent (3%) of the total construction value to subcontractors, equipment lessors and/or material suppliers that are certified as Disabled Veterans' Business Enterprise ("DVBE").

These goals are additional to the goal of awarding twenty-five percent (25%) of the total construction value to Small Business Enterprises ("SBEs"), noting that goals are not additive, meaning the same contractor can be counted in different categories.

Further, the Project's construction will be governed by a Project Labor Agreement (PLA), which must be completed prior to NJEDA issuing a NTP for construction services (currently targeted for October 2021). The parties to the PLA must agree to comply with NJEDA's affirmative action rules. Those rules require the CM to undertake good faith efforts to hiring goals for minority group members and women workers at percentages no less than the median of the hiring goals established pursuant to N.J.A.C. 17:27-5.2 for the five counties closest to the Project Area; equating to medians of eighteen percent (18%) for minority group members and 6.9 percent (6.9%) for women.

Additionally, the union representatives that are parties to the PLA shall acknowledge that they will be required to negotiate an agreement with NJEDA or the New Jersey Department of Labor and Workforce Development that addresses a process for ensuring that there are robust apprenticeships with a plan to expand opportunities.

Proposer scoring

AECOM Tishman, with a total score of 85.76 (out of 100), was the highest ranked of the three proposals received, followed by Kiewit Infrastructure Co. with a score of 71.77 and Turner Construction Company with a score of 64.49. AECOM Tishman scored highly on non-price criteria and submitted a favorable price relative to the other proposals, including:

- A lump-sum price of \$175,000 for Phase one preconstruction services (including PLA development), compared to prices of \$400,000 and \$1,975,760 for the other two proposals;
- A fully-loaded hourly rate of \$212 for Phase two preconstruction services, compared to prices of \$180 and \$222 for the other two proposals; and
- An average CM fee of two percent (2%); compared to 5.25 percent (5.25%) and 15.25 percent (15.25%) for the other two proposals.

The evaluation committee was satisfied with AECOM Tishman's understanding of and proposed approach to preconstruction services. Their proposed CM fee is also considered to be broadly in-line with commercial standard for a project of this size. The contracted (average) CM fees for the taxation and health buildings, which the Authority is also delivering on behalf of the State, are 1.5 percent (1.5%) and two percent (2%) respectively.

Figure 1 summarizes price and non-price scores, with detailed scoring included in Exhibit A.

Figure 1 – Aggregate scores across the three proposals

Proposer	Price score (max score 32)	Non-price score (max score 68)	Total score (max score 100)
AECOM Tishman	31.5	54.26	85.76
Kiewit Infrastructure Co.	10.67	61.1	71.77
Turner Construction Company	21.83	42.66	64.49

Following scoring and formalization of the Committee's recommendation to award on the basis of being the highest rank bidder, AECOM Tishman was issued a request for a Best and Final Offer (BAFO). AECOM Tishman's BAFO included a lump sum price of \$150,000 for Phase one preconstruction, a full-loaded hourly rate of \$203.82 for Phase two preconstruction and an average CM fee of 1.9 percent (1.9%), representing a further saving for the Authority.

Scope of services covered by the contract

The RFP and contract include both preconstruction and construction services.

Preconstruction services will include scheduling, cost estimating, analyzing constructability, value engineering, sustainability engineering, developing subcontractor lists, identifying long-lead procurement items, and working with the project's Phase One design firm, M&N

¹ Proposers were asked to provide a fee for CM services undertaken with and without a Guaranteed Maximum Price (GMP)

(“Design Engineer”). Work with the Design Engineer will include finalizing design development, preparing construction documents, evaluating constructability, developing a site logistics and mobilization plan, and maintaining the budget through design completion.

Construction Services will include the CM acting as the Authority’s Constructor, competitively bidding and holding all subcontractor contracts, with compensation based on one of the following two options, which option shall be determined by NJEDA at its sole discretion upon design completion: cost of the Work Plus a Fee with a Guaranteed Maximum Price (GMP); or cost of the Work Plus a Fee without a GMP.

Initial CMAR budget

Based on the proposed selection of AECOM Tishman, staff is requesting an initial budget of \$150,000 for the CMAR work. The budget is based on the lump-sum price for Phase one preconstruction services and will be used by Staff to issue a NTP for Phase one preconstruction services. Staff intends to issue that Notice immediately upon contractual close. Timely issuance of the NTP will enable the CM to develop a delivery schedule and budget in advance of parties agreeing NTPs for construction services. Timely completion of these tasks is critical to preserving the target for core construction commencement in Quarter 4 2021.

Once the CM develops the delivery schedule and budget, Staff will return to the Board with a request to approve a construction budget prior to issuing a construction services NTP.

REQUEST

The Members of the Board are asked to approve the selection of AECOM Tishman as the Authority’s Construction Manager at Risk (CMAR) for the NJWP project.

Members are also asked to approve an initial budget of \$150,000, which will be used for the first NTP for Phase one preconstruction services.



Tim Sullivan, CEO

Prepared by Jonathan Kennedy & Dennis Feeney

Exhibit A – Proposal scores (total and by evaluation criteria)

			1	2	3	4.a.	4.b.	4.c.	
No.	Name of Firm	Office Location	Ability to execute the project scope (see factors listed below scoresheet)	Experience of key project staff relative to projects of similar size, scope, and complexity	Firm-level experience relative to projects of similar size, scope (see factors listed below scoresheet)	Fee Price: Parcel A & G1 PreConstruction Services & PLA (Lump Sums)	Fee Schedule: Balance of Phase 1 & Phase 2 PreConstruction Services (Fully Loaded Hourly Rates)	Fee Price: Construction Management Fee for Phase One and Phase Two	Total Evaluation Score for Each Firm
			19 Points	19 Points	30 Points	5 Points	15 Points	30 Points	100 Points
1	Aecom Tishman	Piscataway, NJ	15.14	15.04	24.08	0.500	1.000	30.000	85.760
2	Kiewit Infrastructure Group	Woodcliff Lake, NJ	16.66	17.82	26.62	0.167	0.500	10.000	71.767
3	Turner Construction Company	Philadelphia, PA	12.28	11.96	18.42	0.333	1.500	20.000	64.493



TO: Members of the Authority

FROM: Tim Sullivan

DATE: July 14, 2020

SUBJECT: New Jersey Wind Port – Request for Financial and Commercial Advisor Budget Increase

REQUEST

The Members of the Board are asked to approve a \$2.5 million budget increase for financial and commercial advisory services pertaining to the New Jersey Wind Port (NJWP) project. Services will be provided by Ernst & Young Infrastructure Advisors (“EYIA”) under an existing contract.

In February 2020, the Board approved an initial budget of \$2.55 million for Port-related professional services, of which \$1.65 million was allocated by Staff to financial advisory services.¹ Staff expect to incur \$1.65 million in costs under its contract with EYIA by the end of July 2021.

The \$2.5 million budget request is sized to ensure continuity of specialist support until the Port’s commercial and financial structure is fully resolved and implemented, and initial subtenant selection is complete. Requisite commercial and financial support beyond these foundational milestones for the Project will be competitively re-bid at that point.

The work will be performed on a fully loaded hourly rate basis consistent with the terms and pre-negotiated rates of EYIA’s existing contract.

Staff anticipates capitalizing these costs alongside all other external project costs and staff time into the development of the project, with capitalized costs funded via state project funding.

¹ The balance of funding approved by the Board was allocated by Staff to technical advisory services, provided by WSP USA (WSP) and appraisal services, provided by Sterling, DiSanto & Associates.

BACKGROUND

Current service needs

In February 2020, the Board approved up to \$2.55 million in an initial budget for professional services in support of the NJWP project, encompassing financial, technical and appraisal services, as well as delegation to the Chief Executive Officer to approve Staff's recommendations for two procurements (financial and technical advisory services).

As the possibility existed that the project's financial and commercial structure may involve State or Authority bonds, Staff procured financial services in accordance with the Authority's process pursuant to Executive Order 26 (Whitman 1994) ("EO 26"). The EO 26 process requires a request for proposals but does not specifically require public advertisement. Consistent with this, five financial advisory firms were identified based on an assessment of capability and with reference to GSA listings and NJ Treasury's P3 Advisor Pool. Vendors were issued a Request for Interest; with four vendors electing to receive a Request for Qualifications and Proposals (RFQ/P).² Following proposal scoring on price and non-price criteria, EYIA was appointed on April 12, 2020.

The scope of services included in the RFP – and contractualized with EYIA – is two phased. Phase one, which was completed (for a fixed price) in Quarter 3 of 2020, involved the identification of a high-level financing plan and construction delivery method. Phase two, which commenced from Quarter 3 of 2020 and remains ongoing, involves providing specialist support during the Project's commercial and financial structuring and inaugural procurement phase, working alongside the Authority's legal and technical advisors. More specifically, the scope of services includes:

- Supporting the Authority in its commercial negotiations with third-parties through provision of sound and timely financial and commercial advice – including support in negotiating with the site owner (PSEG) and with port subtenants
- Conducting ongoing due diligence in support of project objectives, including refining risk identification, allocation and mitigation, and adjusting financial assumptions and models
- Contributing to best practice procurement by informing procurement schedules, submittal requirements, assistance with drafting of RFQ/RFPs and other procurement documents, as well as establishing financial evaluation criteria
- Ensuring that contracts are acceptable to market, result in commercially sound outcomes and are executed within required project timeframes
- Coordinating effectively with and where necessary integrating contributions from the Authority's technical advisors, legal advisors, and other advisors as necessary
- Ensuring sound reporting on all commercial aspects of the project

The contract also provides for additional related services, such as construction phase or refinancing support, if the Authority determines that such services are in the best interests of the State.

² One vendor advised the Authority following receipt of a Request for Interest that it did not wish to receive an RFQ/P

A core focus for EYIA to-date has been assisting the Authority in reaching a commercial agreement for long-term use of the property with PSEG. Given the long-term nature of the lease and complexities stemming from the adjacent Hope Creek nuclear plant, negotiations with PSEG remain ongoing. Concurrent to lease negotiations, EYIA is advising the Authority in its ongoing negotiations with an OSW developer, which are expected to extend to Quarter 4, 2021, and is assisting the Authority to resolve its overall commercial strategy for tenant selection.

Ongoing support needs

The \$2.5 million budget request is sized to ensure continuity of specialist support until the Port's commercial and financial structure is fully resolved and implemented, and initial subtenant selection is complete. Staff anticipates this will occur within 18-24 months. Requisite commercial and financial support beyond these foundational milestones for the Project will be competitively re-bid. In particular, Staff anticipate requiring EYIA's specialist support with:

- Finalizing contractual terms with a Construction Manager (CM) including resolving Liquidated Damages (LD) terms and sizing, following the conclusion of the CM procurement process that is currently underway
- Ongoing refinement of the Project's financial (cashflow) model, and sculpting of funding sources and funding uses – which will be used to inform decisions on the sizing and timing of future bond issuances
- Assessing potential corporate and commercial structures for the Port and, if necessary, helping with structure implementation
- Helping to resolve the Port's long-term operating model and supporting the Authority in procuring a third-party operator
- Finalizing the tenant selection process for the Port and assisting the Authority in its lease negotiations with offshore wind industry subtenants
- Evaluating opportunities to attract private capital for future phases of Port development.

In addition, EYIA will support the Authority as it resolves the commercial structure and financing plan for Phase two of the Port's development, which is now being considered on a standalone basis from Phase one due to fiscal and commercial considerations. Specifically, Staff are assessing the potential for private financing where it offers value for money for the State; building on the work that has been done for Phase one. Funding is also intended to cover the Authority's costs in executing Phase two of the Port's development, including securing private finance, if applicable.

The Authority's cost exposure will continue to be managed through the issuance of task orders, where parties agree to a precise scope and a not-to-exceed amount based on EYIA's contracted hourly rates, with EYIA reporting biweekly on expenses incurred against the cap.

REQUEST

The Members of the Board are asked to approve a \$2.5 million budget increase for financial and commercial advisory services pertaining to the NJWP project. Services will be provided by EYIA under an existing contract.

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

Tim Sullivan, CEO

Prepared by Jonathan Kennedy



TO: Members of the Authority

FROM: Tim Sullivan

DATE: July 14, 2021

SUBJECT: New Jersey Wind Port – Request For Technical Advisory Services Budget Increase

SUMMARY

The Members of the Board are asked to approve a \$2.5 million budget increase to the current \$805,300 contract value for civil and environmental engineering services pertaining to the New Jersey Wind Port (NJWP) project. Services will be provided by WSP USA (WSP) under an existing contract with the Authority.

The budget request is sized to meet the NJWP's expected civil and environmental engineering services needs through completion of Phase one construction and Phase two preconstruction, anticipated to be 2024. Technical support for Phase two construction will be competitively procured as preconstruction nears completion.

Work will be performed by WSP on a fully-loaded hourly rate basis consistent with the terms and pre-negotiated rates of its existing contract. As can happen with large infrastructure projects, and particularly one that is a first-of-its-kind in the United States, costs change over time as the project is better defined and initial studies are completed. Continuing with WSP will result in a better outcome for the State given WSP's detailed knowledge of the site accumulated over the past 15 months and avoids a gap in necessary specialist support at a critical stage in the Project's execution. The terms of WSP's contract, including the scope of work, is otherwise unchanged.

Staff intends capitalizing all costs incurred under WSP's contract, alongside all other external project costs and staff time, into the development of the NJWP project. The Project will draw on a mix of state appropriations and other public funding, as well as supplementary public financing.

BACKGROUND

Original contract

In February 2020, the Board approved up to \$2.55 million for professional services in support of the NJWP project, encompassing financial, technical and appraisal services, as well as delegation to the Chief Executive Officer to approve Staff's recommendations for two procurements (financial and technical advisory services).

The Authority subsequently procured technical services in accordance with L. 1998, c. 399 (also referred to as S.2194). As required by that law, bidders were required to have filed a statement of qualifications. Staff reviewed such statements on file with the Authority as well as statements filed with the State's Division of Property Management and Construction (DPMC). Staff identified a competitive pool of qualified firms based on an assessment of capability and issued those firms a Request for Proposals (RFP). The RFP indicated that the initial budget was a maximum not-to-exceed \$500,000. All shortlisted firms submitted proposals. Following an evaluation of proposals on price and non-price terms, WSP were awarded the contract with the initial not-to exceed value of \$500,000 – with payment made by the Authority on a time and materials basis based on pre-agreed fully loaded hourly rates. This contract commenced on May 19, 2020. In December 2020, the Authority increased WSP's contract value by a further \$305,300.

Funds that were allocated for WSP's technical advisory services are expected to be depleted by the end of July 2021 however the Authority's need for specialist support extends well beyond. As can happen with large infrastructure projects, and particularly one that is the first-of-its-kind in the United States, costs change over time as the project is better defined and initial studies are completed. Continuity of specialist support is critical to the project schedule and to ensuring the Authority's interests are protected in its dealings with the property's landlord, PSEG.

Site complexities have increased the level of support needed

At the time the RFQ/P for technical services was issued in March 2020 site conditions were unknown and the Port's overall concept plan was at an embryonic stage. Extensive surveying, environmental assesment, geotechnical, design and permitting work undertaken over the past 15 months has enabled Staff to arrive at a final concept plan and development schedule. This work also revealed significant complexities with the site that were not known at the time of the RFQ/P, and which translate into a greater need for specialist support. In particular, the overall site has had to be broken into multiple individual parcels recognizing differences between areas of the site in respect to historic use, permitting requirements, existing facilities, and the need to minimize impacts on the proximate nuclear power plant. This complexity has translated into an increased need for specialist support while leaving the original scope of work unchanged.

Commercial realities translate into a need for prolonged support

Over the past 12 months the Authority and PSEG have worked collaboratively to arrive at a final concept plan and development schedule, at the same time negotiating a long-term ground lease. This process has clarified PSEG's role in the project vis-à-vis that of the Authority, with PSEG's role now limited to that of site owner and landlord and the Authority as the sole NJWP developer. Due to the proximity to the Hope Creek nuclear power plant, PSEG will however retain close control over permitting, existing facility relocation and certain other aspects of development. PSEG will also retain responsibility for environmental testing and remediation to the extent that remediation is a landlord responsibility per the terms of the ground lease.¹

This allocation of roles and responsibilities was not known at the time the RFQ/P was issued. Further, PSEG's retained control over environmental, permitting and related aspects translates into an ongoing need for specialist support in order to vet information and protect the State's interests – which could not have been anticipated when the initial contract value was set.

Public re-bidding would risk a gap in support at a critical time

¹ The precise terms of PSEG's remediation responsibility vis-à-vis that of the Authority remains subject to negotiation with PSEG.

Publicly re-bidding civil and environmental services at this time would risk a gap in specialist support at a critical phase of the Project's execution; with a procurement likely to take 4 – 6 months to complete and any new contractor requiring an additional 4 – 6 months to familiarize themselves with the site and sizeable body of work undertaken to-date. This gap would occur at a critical time for the project. The Authority is currently finalizing a ground lease and negotiating the environmental testing (and potentially remediation) required for each parcel of property. Following lease execution, the Authority will have 180 days to assess site conditions, including environmental conditions and associated remediation cost and schedule impacts. All environmental testing will be undertaken by PSEG, with WSP helping the Authority to interpret the results and impacts for the project's cost and schedule.

WSP's scope, and all other contractual terms, will remain unchanged

As can happen with large infrastructure projects over time, Staff here are seeking to increase the potential value of WSP's contract, but the scope of works and all other contractual terms will remain unchanged. WSP will continue to support the Authority:

- In evaluating and understanding the thoroughness and accuracy of the information provided by the property owner (PSEG);
- In determining the current overall quality and condition of the Project Site, as well as the feasibility, suitability and development potential of the Project Site; and
- In determining the overall quality, cost effectiveness and feasibility of proposed development plans.

Further, WSP will be bound by the full-loaded hourly rates included in its response to the March 2020 RFQ/P, with costs managed by Staff through the issuance of task orders.

The budget request is sized to meet the Port's expected civil and environmental engineering services needs through completion of Phase one construction and Phase two preconstruction, which is anticipated in calendar year 2024. Technical support for Phase two construction will be competitively procured at that time.

RECOMMENDATION:

The Members of the Board are asked to approve a \$2.5 million budget increase for civil and environmental engineering services pertaining to the New Jersey Wind Port (NJWP) project. Services will be provided by WSP under an existing contract with the Authority.



Tim Sullivan, CEO

Prepared by Jonathan Kennedy, Dennis Feeney



TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: July 14, 2021

SUBJECT: New Jersey Wind Port – Request for increase to Moffatt & Nichol (M&N) contract to include: Engineering and design of beneficial use sites; and Berthing utilization analysis

REQUEST

The Members of the Board are asked to approve an \$844,946 increase to the Authority's existing contract with Moffatt & Nichol (M&N) for design and engineering services in relation to the New Jersey Wind Port (NJWP). Funding will be used for:

- A Change Order (CO) directing M&N to undertake feasibility, planning and detailed design of potential beneficial use sites proximate to the Port, for a lump-sum price of \$698,678; and
- A CO directing M&N to undertake a detailed berthing utilization analysis that will serve as a key input to the Authority's concept plan for a potential second phase of port development, for a lump-sum price of \$76,400.

The request for funding approval builds-in a 10 percent contingency for the beneficial use CO recognizing the unknown nature of site conditions and potential for design adjustments.

Approval of this request will increase approved funding for M&N's contract from \$9.5 million to \$10.3 million. Costs incurred under the contract totaled \$4.7 million through May 31, 2021. Staff intends capitalizing all costs incurred under M&N's contract, alongside all other external project costs and staff time, into the development of the NJWP project. The Project will draw on a mix of state appropriations and other public funding, as well as supplementary public financing.

The Authority has also submitted an application for a National Fish and Wildlife Foundation Delaware Watershed Conservation Fund (DWCF) grant of up to \$750,000 to partially cover the costs of beneficial reuse-related feasibility, planning and engineering.

1 Beneficial Use

Schedule acceleration & cost savings

The scope of the NJWP includes significant dredging in order to create a channel between the main Delaware River shipping channel and the Port. The Project's current design will see dredge material deposited into an existing Confined Disposal Facility (CDF) at the port property. The volume of dredge will require the elevation of existing CDF dikes, with an associated capital cost. At the same time, placement of dredge at the port site impacts the schedule for when that port property can be developed, with dredge material requiring sufficient time to drain (in place) before being moveable and/or usable as surcharge. It follows that by lessening the volume of dredge deposited at the Port site the Authority can avoid capital costs and can derive schedule benefits for any future port expansion.

A positive environmental impact

NJEDA has also become aware through its engagement with the NJDEP and federal permitting agencies of the potential for dredged material to be used for environmental remediation and betterment, such as habitat creation and restoration, beach nourishment, and land site remediation; for which there is a demonstrable need along the Delaware river in the vicinity of the NJWP. Working with PSEG and PSEG's environmental services firm AKRF the Authority has assessed opportunities for "beneficial use" proximate to the Port site. This analysis initially identified five locations with a demonstrable restoration need. Sites were then evaluated using varying criteria including habitat goals, potential project costs, regulatory considerations, property ownership and overall logistics, enabling the shortlisting of three (3) project sites as having the greatest potential for success, including:

- Abbotts Meadow Wildlife Management Area (WMA)
- Stoney Point
- Artificial Island Bay

Exhibit A outlines the three sites in further detail.

Interdependence with Port design

Preliminary planning and feasibility assessment form the next steps in determining beneficial use site capacity and readiness, as well as requisite capital improvements and relatedly, project economics. This will be followed by the execution of an agreement with the NJDEP as the owner (in the case of Abbotts Meadow and Stoney Point) or site overseer (in the case of Artificial Island Bay), and engineering design and bid document preparation.

The Authority is tasking M&N with this scope of work via a CO under its existing contract for design and engineering services. The consolidation of beneficial use site planning and design under M&N – which is also undertaking the design of the NJWP – will ensure a seamless integration of beneficial use site design with that of the NJWP; with M&N being able to apply findings from feasibility, planning and design of the beneficial use sites to that of the NJWP and vice versa. For instance, if M&N identifies technical or economic constraints

with a given site the design of that site can be adjusted, with the design of the NJWP site concurrently recalibrated to accommodate the additional dredge placement needs. This holistic approach will help the Authority to arrive at the most efficient overall dredge placement solution, at the same time minimizing schedule risks. Alternatively, splitting the feasibility and design across the different sites and/or vendors would create interface risks and likely additional costs for the Authority through COs; with Authority staff needing to coordinate and integrate design across multiple vendors and sites concurrently.

Scope of work

M&N's scope will be two phased, with Task 1 involving a high-level assessment of the three sites with the objective of identifying a preferred location, and Task 2 involving a deeper dive assessment of site conditions and design completion once a preferred site (or sites) is identified and the required agreement is executed with NJDEP.

For Task 1, M&N will perform planning feasibility studies for each of the three sites with the objective of selecting a location for further design. In particular, M&N will undertake a phased approach to determining site viability, comprising:

- Project Management of specialist planning-stage subcontractors (e.g. Geotechnical)
- Preliminary site assessment including hydrographic surveys and aerial images
- Literature review and existing data collection, including:
 - o coastal engineering analysis and design of armor protection
 - o evaluation of impacts due to tidal hydrodynamics, sedimentation, morphological change, wave refraction/diffraction and wave energy distribution
 - o evaluation of LiDAR topographic information for calculation of quantities for containment structure design and capacity for dredged material
- Preliminary geotechnical investigations, including in-water and on-land geotechnical investigation to characterize existing soils along the shoreline within each project area. The geotechnical investigation will consist of borings and laboratory testing
- Securing of requisite state permits for water borings
- Feasibility study report to inform preferred site selection

M&N will commence Task 2 following the identification – and Authority's confirmation – of the preferred site, and the securing of requisite site access and dredge placement agreements. M&N will complete engineering design studies and preparation of bid documents for the development and implementation of placement of dredged material for beneficial use at the selected site. In particular, M&N will undertake the following tasks:

- Project Management of specialist design-stage subcontractors
- Detailed hydrographic and topographic surveys, with data used to inform final design and to compute quantities for containment structure design and capacity for dredged material
- Supplementary geotechnical investigations, including in-water and on-land geotechnical investigations to characterize the existing soils along the shoreline. This will include borings and laboratory testing, with results feeding in to the final site design
- Modeling of coastal processes and tidal flow within wetlands, including use of numerical models to evaluate morphological changes in the vicinity of the project and to assess the potential for long-term accumulation of sediments in any given area

- Coastal engineering design of containment structures, such that contract documents for bidding and construction can be prepared. Plans will be developed to include erosion protection such as rock and vegetation where appropriate
- Permitting support for filling in open waters

Fee breakdown

As outlined in Figure 1, M&N will perform this scope of work for a lump sum price of \$698,678. Recognizing the unknown nature of site conditions, Staff is seeking additional approval for a 10 percent contingency to cover potential design adjustments and/or studies that may be required; increasing the funding request for this scope of work to \$768,546. Any M&N request to increase above the committed lump sum price will be assessed by the Authority's project team and closely scrutinized with the support of its technical advisors, WSP USA.

Figure 1 – Cost breakdown

Task No.	Description	Labor Cost (USD)	Subconsultants (USD)	Expenses (USD)	Total Cost (USD)
1	Preliminary Planning and Feasibility Study				
1.1	Project Management	\$17,520			\$17,520
1.2	Site Reconnaissance and Desktop Review	\$23,652	\$12,600	\$1,355	\$37,607
1.3	Literature Review and Existing Data Collection	\$29,232		\$345	\$29,577
1.4	Preliminary Geotechnical Investigation	\$18,804	\$110,250	\$1,430	\$130,484
1.5	Feasibility Study Report	\$41,136		\$240	\$41,376
	Subtotal Task 1				\$256,564
2	Engineering Design Studies and Contract Document Preparation				
2.1	Project Management	\$17,520			\$17,520
2.2	Hydrographic and Topographic Surveys	\$13,976	\$78,750	\$1,215	\$94,011
2.3	Supplementary Geotechnical Investigations	\$18,840	\$84,000	\$2,630	\$105,370
2.4	Modeling of Coastal Processes and Tidal Flow	\$23,688		\$113	\$23,801
2.5	Coastal Engineering Design	\$181,650		\$113	\$181,763
2.6	Permitting Support	\$19,536		\$113	\$19,649.00
	Subtotal Task 2				\$442,114
To/tal Fee					\$698,678

The Authority has also submitted an application for a National Fish and Wildlife Foundation for a Delaware Watershed Conservation Fund (DWCF) grant to partially cover the costs of beneficial reuse-related planning and engineering. Grants, which can be up to \$750,000, will be announced in August 2021. The Authority's grant application was supported by the New Jersey Department of Environmental Protection's (NJDEP) Division of Fish & Wildlife which has committed to an \$800,000 in-kind match should the Authority's application be successful. NJDEP's contribution will be via provision of funding to other fish and wildlife habitat restoration projects along the Delaware River, rather than through provision of funding to the Authority.

Should the Authority be successful in its grant application it will return to the Board to seek approval to enter into an agreement with the grantor, the National Fish and Wildlife Foundation, in order to receive the grant funds, and would detail the grant terms and conditions at that point.

2 Berthing utilization analysis

The current design of the NJWP comprises an approximately 30-acre parcel designed to accommodate offshore wind marshalling activities, as well as the repurposing of a small area of existing PSEG (upland) property for additional laydown and potential manufacturing. The Authority, with the support of WSP and M&N, and in consultation with potential end users, is concurrently exploring potential longer-term expansion of the Port.

Determining the required berth capacity to support marshalling and upland manufacturing activities will be a key determining factor in any potential port expansion. To this end, the Authority is tasking M&N with conducting a berthing analysis. This will involve the running of simulations for different levels of marshaling and manufacturing activity at the Port in order to determine required berth capacity; with findings used to inform the Authority's decision making on potential longer-term expansion. Specifically, M&N's assessment will include both static and dynamic analysis and modeling methodologies. For the dynamic analysis, M&N will utilize its proprietary FlexTerm software, a 3D simulation software which provides the ability to visualize how changes may affect port facilities' capacity, operations, efficiency and economics.

M&N will perform this scope of work for a lump-sum price of \$76,400.

REQUEST

The Members of the Board are asked to approve an \$844,946 increase to the Authority's existing contract with Moffatt and Nichol (M&N) for design and engineering services in relation to the New Jersey Wind Port. Funding will be used for:

- A Change Order (CO) directing M&N to undertake feasibility, planning and detailed design of potential beneficial use sites proximate to the Port, for a lump-sum price of \$698,678; and

- A CO directing M&N to undertake a detailed berthing utilization analysis that will serve as a key input to the Authority's concept plan for a potential second phase of port development, for a lump-sum price of \$76,400.

The request for funding approval builds-in a 10 percent contingency for the beneficial use CO recognizing the unknown nature of site conditions and potential for design adjustments.

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

Tim Sullivan, CEO

Prepared by: Jonathan Kennedy & Dennis Feeney

Exhibit A - Overview of shortlisted beneficial use sites

Site Name (& ownership)	Acres	Project Need	Beneficial Use Opportunity	Ecological Goal/Target Species	Material Volume (CY)	Pumping Distance (mi)
Abbotts Meadow <i>Owned by NJDEP's Division of Fish and Wildlife</i>	411	Restoration of Drowning Marsh	High Marsh Restoration/Creation, Marsh Restoration, Sustainability and Elevation Enhancement	High marsh species, low marsh species, and fish habitat	1.6M CY	5 miles
Artificial Island Bay <i>Located in tidal water areas owned by the State of New Jersey. Portions of land adjacent to the Bay are owned by USACE</i>	150	Marsh Creation	High and Low Marsh Creation, Tidal Flat Creation, Living Shorelines	Salt Marsh Sparrow, other high marsh species, migratory shorebirds, fish habitat	1M CY	1.5 miles
Stony Point Cove <i>Owned by NJDEP's Division of Fish and Wildlife</i>	220	Critical Infrastructure Protection	Infrastructure Protection, Erosion Protection, Flood Protection, High Marsh Creation/Restoration, Low Marsh Restoration/Creation, Living Shoreline, Mudflats and Intertidal Shallows	Salt Marsh Sparrow, Pollinator Habitat (Monarchs), fish habitat	1M+ CY	1.8 miles

INCENTIVE PROGRAMS

NEW JERSEY ANGEL INVESTOR TAX CREDIT PROGRAM



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: July 14, 2021

SUBJECT: Proposed Rule Amendments: Angel Investor Tax Credit Program (N.J.A.C. 19:31-19.1)

Request:

The Members are requested to approve:

1. Attached proposed amendments to the rules implementing the Angel Investor Tax Credit Program based on statutory provisions pertaining to increases in available tax credit amounts for qualified investments made by a taxpayer, with bonuses for qualified investments made in targeted locations, pursuant to P.L. 2019, c. 145; and increases in total amount of tax credits available annually, and an expansion to the definition of a qualified investment pursuant to P.L.2020, c.156 and to authorize staff to (a) submit the proposed rule amendments for promulgation in the New Jersey Register and (b) submit the proposed program rules as final adopted rules for promulgation in the New Jersey Register if no formal comments are received; subject to final review and approval by the Office of the Attorney General and the Office of Administrative Law; and
2. Delegation to Authority staff (Managing Director of Operations and Program Manager – Operations) to approve individual applications to the Angel Investor Tax Credit Program in accordance with the terms set forth in the program rules. Specifically, delegation is requested for the Managing Director of Operations to approve individual applications involving tax credit amounts of up to \$500,000, and delegation is requested for the Program Manager – Operations to approve individual applications involving tax credit amounts of up to \$100,000.

Program Purpose / Background:

P.L. 2013 c.14, enacted January 31, 2013, established the New Jersey Angel Investor Tax Credit Program. The Program incentivizes angel investment into emerging New Jersey technology businesses by authorizing the Authority to provide tax credits (which can be applied against corporate business tax or New Jersey gross income tax) to investors based on percentage of a qualified investment made in an New Jersey business conducting research or engaged in pilot-scale manufacturing or technology commercialization in one of the following industries: advanced computing, advanced materials, biotechnology, carbon footprint reduction technology, electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, or renewable energy technology. In addition to being engaged in one of these eligible industries, the business receiving the investment must employ fewer than 225 employees, at least 75% of whom work in New Jersey, for the investor to be eligible for the tax credit. Since inception of the Angel Investor Tax Credit Program, the Authority has approved more than 1,600 applications from investors representing more than \$615 million in total qualified investment into emerging New Jersey technology companies.

P.L. 2019, c. 145, enacted June 30, 2019, expanded the program to provide for an increase to the available tax credits on qualified investments, as well as bonuses for businesses located in targeted locations, or certified minority or women-owned businesses.

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

The ERA includes 15+ economic development programs, including:

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

The Angel Investor Tax Credit program is one of the 15+ programs created or updated under the ERA.

This memorandum provides a summary of the proposed rule amendments to the program pursuant to both P.L. 2019, c. 145, and P.L.2020, c.156. This includes increases to the amount of tax credits available annually under the Program, increases to the amount of tax credits available per qualified investment in an emerging New Jersey technology business, bonus credits available for qualified investments made in emerging New Jersey technology businesses in targeted locations or in certified minority or women-owned businesses, and an expansion of the definition of a qualified investment to include investments made in qualified venture funds.

Available Tax Credits and Tax Credit Award Calculation

Pursuant to P.L.2020, c.156 (ERA), the attached rule amendments (N.J.A.C. 19:31-19.1 through 19.8) increase the amount of tax credits available annually under the program from \$25 million to \$35 million.

As stated above, under the program as originally enacted in 2013, tax credit amounts were equal to ten percent of a qualified investment made in an eligible business. Pursuant to P.L. 2019, c. 145, the attached rule amendments revise N.J.A.C. 19:31-19.6(a) to increase the amount of the allowed tax credit from ten percent to twenty percent of the qualified investment made in an emerging New Jersey technology business. Furthermore, an additional five percent bonus tax credit is available for qualified investments made in an emerging New Jersey technology business located in a qualified Opportunity Zone or New Markets Tax Credit Census Tract, or an emerging New Jersey technology business that is also a New Jersey certified minority or women-owned business. Therefore, the maximum allowable tax credit now available under the program, following these proposed rule amendments, is twenty-five percent of a qualified investment.

Collectively, these legislative enhancements and amendments to the rules will expand the size of the program – making a greater amount of tax credits available annually as well as allowing a greater percentage of qualified investment to be eligible for a tax credit, particularly for investments made in economically distressed areas, or for investments made into minority and woman-owned businesses, building a stronger and more equitable New Jersey innovation economy.

The maximum allowed tax credit amount remains \$500,000 for the tax credit vintage year for each qualified investment made by the investor.

Expansion to Definition of Qualified Investment

Pursuant to P.L.2020, c.156 (ERA), the attached rule proposal provides new rules through N.J.A.C. 19:31-19.6(b) allowing for a tax credit of twenty percent of a qualified investment made in a qualified venture fund. An additional five percent bonus tax credit is available for qualified investments made in qualified venture funds which invest 50 percent of its funds in New Jersey diverse entrepreneurs. A qualified venture fund may not apply for the Angel Tax Credit Program as an investor, if one of its investors has already received a tax credit for investing in that qualified venture fund.

For an investment into a venture fund to be eligible as a qualified investment, the investor must enter into an agreement establishing an irrevocable contractual commitment with the qualified venture fund. This agreement must be in writing and fully executed by both the investor and qualified venture fund. An investor must submit a completed application to the Authority within six months of executing an irrevocable contractual commitment to the qualified venture fund to be considered for a tax credit. This is consistent with the existing eligibility criteria for qualified investments in a New Jersey emerging technology business company or a New Jersey emerging technology business holding company which require an investor submit a completed application within six months of the qualified investment date.

The tax credit amount for the qualified investment will be determined according to the total amount specified in the of the irrevocable contractual commitment at execution of the agreement by both the investor and qualified venture fund.

This legislative enhancement and proposed new rule will expand the forms of investment for which a tax credit is allowable under the program, catalyzing New Jersey's innovation economy by growing the size and availability of funding through venture capital firms. Furthermore, these firms will be incented to invest a significant portion of funding in emerging technology businesses owned by diverse entrepreneurs, helping to build a stronger and more equitable New Jersey innovation economy.

New or Modified Definitions

The attached rule proposal makes the following modifications or additions to existing definitions:

- An addition to the existing "Qualified investment" definition of: "Qualified investment" also means the irrevocable contractual commitment to a qualified venture fund.

The attached rule proposal establishes the following new definitions:

- "Qualified venture fund" means a venture fund required by a commitment agreement with the Authority to invest a minimum of 50 percent of the venture fund's committed funds in New Jersey based businesses that the Authority, in its sole discretion, based upon the qualified venture fund's investment history, if any, its private placement memorandum and other relevant information, has determined has the capacity to make the minimum investment.
- "Commitment agreement" means the contract between the qualified venture fund, the investor, and the Authority pursuant to N.J.A.C. 19:31-19.7(d)2.
- "New Jersey based business" means a company with fewer than 225 employees, of whom at least 75 percent are filling a position in New Jersey, that is doing business, employing or owning capital or property, or maintaining an office in this State.

- “Venture fund” means a partnership, corporation, trust, or limited liability company that invests cash in a business during the early or expansion stages of a business in exchange for an equity stake in the business in, which the investment is made. Venture firm may include a venture capital fund, a family office fund, or a corporate investor fund, provided that a professional manager administers the venture firm.
- “Diverse entrepreneur” means a New Jersey based business that meets the criteria for a minority business or female business set forth in section 3 of P.L. 1983, c. 482 (N.J.S.A. 52:32-19), as evidenced by a certification by the State as a minority business or a women’s business pursuant to P.L. 1986, c. 195 (N.J.S.A. 52:27H-21.17 et seq.).

Delegated Authority

In addition to the rule proposal presented for the Members’ consideration, the Members are also requested to approve changes to delegated authority to support the timely and efficient processing of program applications under the Angel Investor Tax Credit Program.

The proposed delegated authority would permit the Managing Director of Operations to approve applications with a tax credit amount not to exceed \$500,000.

The proposed delegated authority would also permit the Program Manager – Operations to approve applications with a tax credit amount not to exceed \$100,000.

All taxpayers approved for tax credit awards under the Angel Investor Tax Credit Program are subject to an annual cap of no greater than \$500,000 in tax credits per year. This pertains to qualified investments made in either emerging New Jersey technology businesses, or qualified venture funds.

All approvals would be made in accordance with the terms set forth in the program rules. Updates on any approvals made under Delegated Authority will continue to be made to the Board on a quarterly basis.

Compliance with Executive Order 63

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

In addition, the Authority issued a news release advising the public that the Angel Tax Credit Program rule proposal was available for review and of the opportunity to provide informal input. Furthermore, several known stakeholder groups were contacted directly by the Authority and notified that the rule proposal was available for feedback via the Authority’s website.

Chief Compliance Officer Certification of Draft Rule Proposal

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

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

Program Evaluation Plan

While staff already actively tracks application and approval data relative to the Angel Investor Tax Credit Program, staff plans to establish a framework of key performance indicators (KPIs) to quantifiably measure over time how well the Angel Investor Tax Credit Program will meet the NJEDA’s operational and strategic goals.

Along with the goals and outcome of the program, the Authority will also request demographic information related to the New Jersey emerging technology company receiving the investment under the Angel Investor Tax Credit Program application, including demographic information with respect to the company’s ownership, which will not impact program eligibility, but will be used for the Authority’s tracking and reporting purposes.

This is part of the Authority’s ongoing efforts to measure to what extent its programs and services are serving New Jersey’s diverse residents, communities, and businesses. Other metrics are anticipated to focus on the Angel Tax Credit Program’s outreach efforts and volume of applicants, process and operational effectiveness, and economic development outcomes. The KPIs will provide valuable insight for staff and the Board to assess the effectiveness of the program. These KPIs are still under development.

Recommendation

The members are requested to approve: (1) The attached proposed amendments to the rules implementing the Angel Investor Tax Credit Program based on statutory provisions pursuant to P.L. 2019, c. 145 and P.L.2020, c.156 and to authorize staff to (a) submit the proposed rule amendments for promulgation in the New Jersey Register and (b) submit the proposed program rules as final adopted rules for promulgation in the New Jersey Register if no formal comments are received; subject to final review and approval by the Office of the Attorney General and the Office of Administrative Law; and (2) Delegation to Authority staff (Managing Director of Operations and Program Manager – Operations) to approve individual applications to the Angel

Investor Tax Credit Program in accordance with the terms set forth in program rules. Specifically, delegation is requested for the Managing Director of Operations to approve individual applications involving tax credit amounts of up to \$500,000, and delegation is requested for the Program Manager – Operations to approve individual applications involving tax credit amounts of up to \$100,000.



Tim Sullivan, CEO

Prepared by:
Clark Smith
Elizabeth George-Cheniara
Pat Rose

Attachments: Appendix A – Proposed New Rules – Angel Investor Tax Credit

Appendix A

OTHER AGENCIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Authority Assistance Programs

Angel Investor Tax Credit Program

Proposed Amendments: N.J.A.C. 19:31-19.1 through 4 and 19.6 through 19.8

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

Authority: P.L. 2019, c. 145.

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

Proposal Number: PRN 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 rules implementing the Angel Investor Tax Credit Program pursuant to recent statutory revisions in P.L. 2019, c. 145 and the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156.

Effective January 31, 2013, the New Jersey Angel Investor Tax Credit Act (“Act”) established credits against the corporate business tax or New Jersey gross income tax. The credit is equal to a percentage of a qualified investment made in a New Jersey emerging technology business whose primary business is an eligible technology. Eligible technology means advanced computing, advanced materials, biotechnology, carbon footprint reduction technology, electronic device technology, information technology, life sciences, medical device technology, mobile communications technology, or renewable energy technology. A qualified investment was subsequently expanded to include a qualified investment in an New Jersey emerging technology business holding company.

At program inception, the tax credit amount was 10 percent of a qualified investment. In 2019, Governor Murphy signed legislation updating the program and notably, increasing the percentage amount from 10 percent to 20 percent with a 5 percent bonus for either investing in New Jersey certified women or minority owned businesses or in a business located in an Opportunity Zone or New Markets Tax Credit census tract.

Most recently, as part of the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, the annual cumulative total amount of credits allowed to be approved was increased from \$25 million to \$35 million. Additionally, investors' commitments to venture capital funds were included as a qualified investment and eligible to receive a tax credit as reflected in new definitions for "qualified venture fund" and venture fund."

In practice, a venture capital fund is administered by a professional manager. The venture capital fund is a distinct entity that obtains legal commitments for future capital funding from investors. After investor commitments are received, the manager oversees the distribution of capital to businesses. This period of time where investments in companies are made by the fund is referred to as the investment period. When the venture capital fund looks to make an investment in a business, the fund requests from each investor a percentage of their capital commitments to finance the investment transaction. In response to each request, the investors transfer funds to the venture capital fund. Once the requested capital from the investors is received by the venture capital fund, the fund transfers this capital to the business, typically, in exchange for a percentage of ownership.

The Act adds investors' venture fund commitments to the qualified investment definition allowing for a tax credit. For a venture fund to qualify, it must invest a minimum of 50 percent of its capital in New Jersey businesses. The Authority in its sole discretion will determine the venture fund's capacity to meet the 50 percent investment threshold based upon the fund's and/or its principals' prior history of investing in New Jersey, commitments to potential investors in the private placement memorandum and other relevant information. The tax credit amount is equal to 20 percent of the qualified investment, which is the investors' initial commitment. In addition, a 5 percent bonus is available for a venture capital fund investing a minimum of 50 percent in New Jersey diverse entrepreneurs.

The current program allows investors to receive tax credits through the Angel Investor Tax Credit Program for investments in a New Jersey emerging technology business that:

- Employs at least 1 and fewer than 225 full-time employees, at least 75 percent of whom must work in New Jersey at both the time of the investment and the application submission;
- Conducts business, employs or owns capital or property, or maintains an office in New Jersey;
- Incurs qualified research expenses, conducts pilot scale manufacturing, or commercializes one or more eligible technologies in New Jersey; and
- Has an eligible technology as its primary business.

Investments in a New Jersey emerging technology business holding company can also receive tax credits under the current Program. To qualify for a tax credit, the full amount of cash transferred from the investor to the holding company must also transfer from the holding company to the New Jersey emerging technology business within the same calendar year. The New Jersey emerging technology businesses must meet all program requirements.

P.L. 2020, c. 156 also authorized granting tax credits to investors for their commitments to a qualified venture fund that:

- Is a partnership, corporation, trust, or limited liability company administered by a professional manager that invests cash in a business during the early or expansion stages in exchange for an equity stake in the business; and
- Invests a minimum of 50 percent of its funds in New Jersey based businesses.

Although the tax credit will be issued based upon the investor's commitment to the fund and prior to funding in most instances, in order for the tax credit to be issued, the investor, the qualified venture fund and the Authority will enter into a contractual commitment which will require among other things the investor to fund all capital calls or be subject to a claw back for the prorated unfunded capital calls.

Under the program, an Angel Investor Tax Credit recipient is not required to be a resident of New Jersey or the United States, however, because these are tax credits, registering with the State of New Jersey and the filing of a New Jersey tax return is required; and, the NJ Division of Taxation is the final approver and issuer of tax credits through this program.

In the first quarter of 2021, with the tax credit amount increased from 10 to 20 percent, 207 Angel Tax Credit applications were approved for a total of \$5,220,753.00 in tax credits. This represented \$32,935,050.00 in private investments into 17 unique companies. Since program inception in 2013 to present, the Authority has approved 1,671 applications totaling more than \$616 million invested in 102 eligible New Jersey businesses.

The following provides a summary of the proposed amendments:

N.J.A.C. 19:31-19.1 is revised to include the terms "a qualified venture fund" in the subsection which provides for the applicability and scope of the subchapter.

N.J.A.C. 19:31-19.2 is revised to include new definitions of "act," "commitment agreement," "diverse entrepreneur," "New Jersey based business," "qualified venture fund," and "venture fund." In addition, the definition of "qualified investment" is revised to also mean "the non-refundable transfer of cash or irrevocable contractual commitment to a qualified venture fund."

N.J.A.C. 19:31-19.3(a) is revised to also include “a qualified venture fund” pertaining to the investments which shall be made to be considered for tax credits under the Angel Investor Tax Credit Program.

N.J.A.C. 19:31-19.3(b) clarifies that an investor seeking approval for an investment in a qualified venture fund must submit to the Authority a completed application within six months of executing an irrevocable contractual commitment to a qualified venture fund.

N.J.A.C. 19:31-19.3(d) is revised to provide that for a qualified investment to a qualified venture fund, the contract containing the irrevocable contractual commitment must be a fully-executed document; and existing language is revised to provide that “for any other qualified investment,” any asset received and any agreement entered into by the investor in connection with a “fully”-executed document in writing.

Proposed new N.J.A.C. 19:31-19.3(f) limits the ability for both an investor and a fund to receive a tax credit for the same funds provided to a New Jersey emerging technology business. If an investor received a tax credit for their investment commitment to a qualified venture fund, then the qualified venture fund shall not apply for tax credits. Further, subsection (f) provides an investor will not be eligible to apply for a qualified investment in a qualified venture fund, if that qualified venture fund has previously been approved tax credits for a qualified investment in a New Jersey emerging technology business or a New Jersey emerging technology holding business.

N.J.A.C. 19:31-19.4(b)1i(2) is revised to clarify that the total amount of the qualified investment, shall be included as part of investor information in the application. The amount of the qualified investment would be equal to the total amount of the irrevocable contractual commitment to the qualified venture fund. The application also includes the current amount of requested tax credit.

Proposed new 19:31-19.4(b)4 establishes the information to be provided by a venture fund as part of the completed application for the program.

N.J.A.C. 19:31-19.6(a) is revised to: 1) increase the amount of the allowed credit against the tax imposed under the Corporation Business Tax or New Jersey Gross Income Tax from 10 percent to 20 percent of the qualified investment made by the investor in an emerging business, or a holding company investing in a business or a qualified venture fund; 2) delete the provision which currently limits the maximum allowed credit of \$500,000 for the tax credit vintage year for each qualified investment made by the investor which is relocated to proposed new subsection (b); and 3) add that, subject to the limits established in the section, the Authority, in consultation with the Director of the Division of Taxation, shall increase the amount of a tax credit allowed by five percent if: the taxpayer makes a qualified investment in a New Jersey emerging technology business or in a New Jersey emerging technology holding company that makes a verified transfer of funds to a New Jersey emerging technology business provided the New Jersey emerging technology business is either located in a qualified opportunity zone, or a low-income community, or is certified by the State as a minority business or a women’s business

pursuant to P.L. 1986, c. 195 (N.J.S.A. 52:27H-21.17 et seq.) ; or, in the case of a qualified investment involving a qualified venture fund, if the qualified venture fund commits in the commitment agreement to invest 50 percent of its funds in diverse entrepreneurs.

Proposed new N.J.A.C. 19:31-19.6(b) pertains to an investment in a qualified venture fund and provides that a taxpayer shall also be allowed a credit in an amount equal to 20 percent of the qualified investment made in a qualified venture fund, up to a maximum allowed credit of \$500,000 for the tax credit vintage year, in each tax year, for each qualified investment made by the investor, similar to an investment made in a New Jersey emerging technology business or holding company that makes a verified investment of funds to a New Jersey emerging technology business, except that the increase in the amount of a tax credit allowed shall be increased by five percent only if the qualified venture fund commits to invest 50 percent of its funds in diverse entrepreneurs. In addition, the maximum allowed credit will include any application made by a related person of the investor in the same New Jersey emerging technology business, New Jersey emerging technology business holding company, or qualified venture fund during the investor's tax credit vintage year where the investor has control for a qualified investment in the same qualified venture fund.

Proposed new N.J.A.C. 19:31-19.6(i) provides that in the event that any certification or application information required from the investor is found to be willfully false or that the investor submitted false or misleading information or failed to submit relevant information in the application or any other submission to the Authority, 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 recapture, including penalties and interest, of some or all tax credits received by the taxpayer.

N.J.A.C. 19:31-19.7(c) is revised to clarify that the regular notification of approval and issuance requirements of the tax credit certificate do not apply to certain investors approved into a qualified venture fund on the basis of an irrevocable contractual commitment under proposed new N.J.A.C. 19:31-19.7(d).

Proposed new N.J.A.C. 19:31-19.7(d) establishes the procedures that apply to an investor that has been approved for a qualified investment into a qualified venture fund on the basis of an irrevocable contractual commitment, including:

1) Following approval by the Authority, but before the issuance of tax credits, the Authority shall notify the investor of the Authority's decision by an approval letter. The letter also informs the investor to review and execute the commitment agreement between the investor, venture capital fund, and Authority;

2) Prior to the issuance of tax credits, the investor shall return a commitment agreement executed by the qualified venture fund and the investor to which the award of tax credits will be subject, and which shall expire if the investor does not return the executed agreement in the period of time required. The terms of the commitment agreement are specified in N.J.A.C. 19:31-19.7(d)2i through x; and

3) Upon receipt of the executed commitment agreement the Authority shall notify the Division of Taxation of the approval, and the Division of Taxation shall then issue the tax credit certificate to the applicant investor.

N.J.A.C. 19:31-19.7(d), recodified as (e), is revised to clarify that the applicant may appeal the Authority's action by submitting, in writing, an explanation to the Authority, within 20 days from the "effective" date of the Authority's action; and proposed new N.J.A.C. 19:31-19.7(d)4, provides that the 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.

Finally, N.J.A.C. 19:31-19.8(a) is revised to increase the amount of credits authorized to be approved by the Authority, in consultation with the Director, from a cumulative total of \$25 million to \$35 million in any calendar year.

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 Angel Investor Tax Credit Program authorizes corporation business and gross income tax credits equal to 20 percent of an investor's qualified investment in a New Jersey emerging technology company. This credit is increased to 25 percent for qualified investments in New Jersey emerging technology businesses certified as a minority or woman owned business enterprises. To date, \$539 million in total investment leveraged from 1,212 angel investments to New Jersey based emerging technology businesses has been supported through the program.

The proposed amendments will have a positive social impact by incentivizing additional private investment in New Jersey emerging technology businesses that perform advance research, pilot manufacturing, or commercialization in one of eight eligible technologies in the following ways. The increase in the tax credit amount made the program more appealing to investors encouraging more New Jersey investments and program applications. The increase in the amount of tax credits available annually will allow the approval of more investments in New Jersey companies. The addition of venture fund commitments as qualified investments will boost investment into New Jersey businesses through funds in addition to direct investor support. The tax credit bonus for diverse entrepreneurs also will drive more funds into minority business and female business.

Economic Impact

The Angel Investor Tax Credit Program strengthens the State's innovation economy through support for emerging technology businesses. It is anticipated that the availability of the increased credit may result in expanded angel investments in New Jersey. Angel investments are generally equity placements and other similar non-refundable transfers of cash, into high-risk start-up ventures as opposed to commercial transactions entered into in the regular course of

business. With the reduction nationally in available early stage venture investments, the Angel Investor Tax Credit Program provides an important means for early-stage, start up businesses to access high risk capital. Furthermore, the angel investor's risk capital is generally combined with Board oversight, business support and mentoring to further advance the business.

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 through growth in New Jersey's current and next generation of high-skill, high-wage emerging technology industries. The increase in investment activity incentivized through the proposed amendments will provide emerging New Jersey technology companies with access to growth-capital to continue research and development, or manufacture or commercialize the technology. As a result, these technology companies will be able to create new highly skilled jobs with high-wages that are needed to support such new business growth.

Agriculture Industry Impact

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

Regulatory Flexibility Statement

The proposed amendments will impose reporting, recordkeeping, or other compliance requirements on small business, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. should the business look to apply for the increased tax credit. Generally, an investor would be required to comply with the EDA's standard, on-line application process. In addition, the proposed new amendments include a graduated application fee designed to ease the burden on applicants that may be small businesses. Finally, the New Jersey emerging technology business in which an investment is made will be required to provide general information relating to its organization and employees to support the investor application, however, professional services will not be necessary for such purposes.

Housing Affordability Impact Analysis

The proposed amendments will not impact affordable housing in New Jersey or evoke a change in the average costs associated with housing units, including multi-family rental housing and for sale housing in the State. The proposed amendments increase the amount of the tax credit available under the Angel Investor Tax Credit Program to spur job creation and growth in New Jersey's current and next generation of high-skill, high-wage emerging technology industries.

Smart Growth Development Impact Analysis

The proposed amendments will not impact smart growth or evoke a change in the number of housing units or result in any increase or decrease in the average cost of housing or in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed amendments increase the amount of the tax credit available under the Angel Investor Tax Credit Program to spur job creation and growth in New Jersey's current and next generation of high-skill, high-wage emerging technology industries.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

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

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

SECTION 19. ANGEL INVESTOR TAX CREDIT PROGRAM

19:31-19.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement the New Jersey Angel Investor Tax Credit Act, P.L. 2013, c. 14 (Act). The Act authorizes credits against corporation business and gross income taxes for qualified investments in New Jersey emerging technology businesses, or in New Jersey emerging technology holding companies, **or in a qualified venture fund**, to spur job creation and growth in New Jersey's current and next generation of high-skill, high-wage emerging technology industries.

19:31-19.2 Definitions

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

“Act” means the New Jersey Angel Investor Tax Credit Act, P.L. 2013, c. 14, as amended.

...

“Commitment agreement” means the contract between the qualified venture fund, the investor, and the Authority pursuant to N.J.A.C. 19:31-19.7(d)2.

...

“Diverse entrepreneur” means a New Jersey based business that meets the criteria for a minority business or female business set forth in section 3 of P.L. 1983, c. 482 (N.J.S.A.

52:32-19), as evidenced by a certification by the State as a minority business or a women's business pursuant to P.L. 1986, c. 195 (N.J.S.A. 52:27H-21.17 et seq.).

...

“New Jersey based business” means a company with fewer than 225 employees, of whom at least 75 percent are filling a position in New Jersey, that is doing business, employing or owning capital or property, or maintaining an office in this State.

...

“Qualified investment” means the non-refundable transfer of cash to a New Jersey emerging technology business or to a New Jersey emerging technology business holding company by an investor that is not a related person of the New Jersey emerging technology business or the New Jersey emerging technology business holding company, at the time of the transfer of cash, the transfer of which is in exchange for:

1. Stock, interests in partnerships or joint ventures, licenses (exclusive or non-exclusive), right to use technology, marketing rights, warrants, options, or any assets similar to those included in this definition, including but not limited to, options or rights to acquire any of the assets; or

2. A purchase, production, or research agreement between or among the taxpayer and the New Jersey emerging technology business or the New Jersey emerging technology business holding company or both.

For the transfer of cash to be considered non-refundable, the assets received by the investor in the exchange referred to in paragraph 1 above and the agreements entered into by the investor referred to in paragraph 2 above must be held or not expire for at least two calendar years from the date of the exchange, with the exception of initial public offerings (IPOs), mergers and acquisitions, damage awards for the New Jersey emerging technology business's default of an agreement, or other return of initial cash outlay beyond the investor's control. **“Qualified investment” also means the irrevocable contractual commitment to a qualified venture fund.**

...

“Qualified venture fund” means a venture fund required by a commitment agreement with an investor and the Authority to invest a minimum of 50 percent of the venture fund's committed funds in New Jersey based businesses and that the Authority, in its sole discretion, determines has the capacity to make the minimum investment based upon the qualified venture fund's investment history, if any, its private placement memorandum and other relevant information.

...

“Venture fund” means a partnership, corporation, trust, or limited liability company that invests cash in a business during the early or expansion stages of a business in exchange for an equity stake in the business in which the investment is made. “Venture fund” may include a venture capital fund, a family office fund, or a corporate investor fund, provided that a professional manager administers the venture fund.

...

19:31-19.3 Eligibility criteria

(a) In order to be considered for tax credits under the Angel Investor Tax Credit Program, an investor shall make a qualified investment in a New Jersey emerging technology business, or a New Jersey emerging technology business holding company, **or a qualified venture fund.**

(b) The Program applies to privilege periods and taxable years beginning on or after January 1, 2012, except that the Program applies to qualified investments in New Jersey emerging technology businesses, and in New Jersey emerging technology business holding companies, that make verified transfers of funds to New Jersey emerging technology businesses that conduct technology commercialization in this State in the field of carbon footprint reduction technology for privilege periods and taxable years beginning on or after May 1, 2017. For qualified investments made on or before July 1, 2013, an investor must submit a completed application by July 1, 2014, except that a completed application for qualified investments in New Jersey emerging technology business holding companies made before May 1, 2017, must be submitted by December 31, 2017. For all other qualified investments in a New Jersey emerging technology business, an investor must submit a completed application within six months of the date of the qualified investment, and for all other qualified investments in a New Jersey emerging technology business holding company, within six months of the date of the verified transfer of funds. **For all qualified investments in a qualified venture fund, an investor must submit a completed application within six months of executing an irrevocable contractual commitment to a qualified venture fund.**

(c) (No change.)

(d) **For a qualified investment to a qualified venture fund, the contract containing the irrevocable contractual commitment must be a fully-executed document in writing. For any other qualified investment, [Any] any asset received and any agreement entered into by the investor in connection with the non-refundable transfer of cash that serves as a qualified investment must be [an] a fully-executed document in writing.**

(e) (No change.)

(f) **A qualified venture fund shall not be eligible as an investor for a qualified investment in a New Jersey emerging technology business or a New Jersey emerging technology holding business if an investor has previously been approved tax credits for a**

qualified investment in that qualified venture fund. An investor that applies for a qualified investment in a qualified venture fund shall not be eligible if that qualified venture fund has previously been approved tax credits for a qualified investment in a New Jersey emerging technology business or a New Jersey emerging technology holding business.

19:31-19.4 Application submission requirements

(a) (No change.)

(b) A completed application shall include, but not be limited to, the following:

1. Investor information, which shall include the following:

i. At the time of the qualified investment:

(1) (No change.)

(2) The total amount of the qualified investment, **including for qualified investments in a qualified venture fund, the total amount of the irrevocable contractual commitment,** and amount of requested tax credit;

(3)-(7) (No change.)

ii. (No change.)

2.-3. (No change.)

4. Venture fund information, if applicable, which shall include:

i. At the time of the qualified investment:

(1) The name, address, and Federal tax identification number;

(2) A list of 100 percent of the venture fund commitment amounts;

(3) The executed contract, and any supporting evidence, demonstrating that the irrevocable contractual commitment was made, as required in N.J.A.C. 19:31-19.3(d); and

(4) Certification from the chief executive officer or general partner of the qualified venture fund that the contract contains an irrevocable contractual commitment to the transfer of cash to the qualified venture fund; and

ii. At the time of application, submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101 (N.J.S.A. 54:50-39); and

Recodify 4. as 5. (No change in text.)

19:31-19.6 Tax credit amount; overpayment and carryforward of tax credits

(a) A taxpayer, upon eligibility review and approval of the investor's application by the Authority in consultation with the Director, and upon issuance of a tax credit certificate by the Division of Taxation, shall be allowed a credit against the tax imposed under the Corporation Business Tax, section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) or New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., in an amount equal to [10] **20** percent of the qualified investment made by the investor in a New Jersey emerging technology business [or], in a New Jersey emerging technology business holding company that makes a verified transfer of funds to a New Jersey emerging technology business, **or in a qualified venture fund**. [up to a maximum allowed credit of \$500,000 for the tax credit vintage year for each qualified investment made by the investor] **The Authority, in consultation with the Director, shall increase the amount of a tax credit allowed pursuant to the section by five percent if:**

1. The taxpayer makes a qualified investment in a New Jersey emerging technology business or in a New Jersey emerging technology holding company that makes a verified transfer of funds to a New Jersey emerging technology business if the New Jersey emerging technology business is:

i. Either located in a qualified opportunity zone pursuant to 26 U.S.C. s.1400Z-1, or a low-income community as defined in 26 U.S.C. s.45D; or

ii. Certified by the State as a minority business or a women's business pursuant to P.L. 1986, c. 195 (N.J.S.A. 52:27H-21.17 et seq.); or

2. In the case of a qualified investment involving a qualified venture fund, if the qualified venture fund commits in the commitment agreement to invest 50 percent of its funds in diverse entrepreneurs for the relevant fund which is part of the irrevocable contractual agreement with the Authority.

(b) The maximum allowed credit shall be \$500,000 for the tax credit vintage year for each qualified investment made by the investor. The maximum allowed credit shall include awards to a related person of the investor in the same New Jersey emerging technology business, New Jersey emerging technology business holding company, or qualified venture fund during the investor's tax credit vintage year if the investor has control over the qualified investment.

Recodify (b)-(g) as (c)-(g) (No change in text.)

(i) In the event that any certification or application information required from the investor is found to be willfully false or that the investor submitted false or misleading information or failed to submit relevant information in the application or any other submission to the Authority, 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 recapture of some or all tax credits received by the taxpayer. Such recapture amount may include interest on the recapture amount, at a rate equal to the statutory rate for tax deficiencies, plus any statutory penalties, and all costs incurred by the Authority and the Division of Taxation in the Department of the Treasury in connection with the pursuit of the recapture, including, but not limited to, counsel fees, court costs, and other costs of collection. The Authority shall confer with the Division of Taxation to determine the recapture amount. Any funds recaptured pursuant to this subsection, including penalties and interest, shall be deposited into the General Fund of the State.

19:31-19.7 Evaluation process; award of tax credits; appeals

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

(c) Except as provided in (d) below, if [If] the Authority has approved the application, the Authority shall notify the Division of Taxation of the approval, and the [. The] Division of Taxation shall then issue the tax credit certificate to the applicant investor.

(d) The following apply to an investor that has been approved for a qualified investment into a qualified venture fund on the basis of an irrevocable contractual commitment:

1. Following approval by the Authority, but before the issuance of tax credits, the Authority shall notify the investor of the Authority's decision.

2. Prior to the issuance of tax credits, the Authority shall provide the investor a commitment agreement and require the investor to return the commitment agreement executed by the qualified venture fund and the investor. The Authority's award of the credits will be subject to the execution of the commitment agreement. Absent extenuating circumstances or the Authority's determination in its sole discretion, the Authority's approval of the tax credits shall expire if the investor does not return the executed commitment agreement within the period of time required by the Authority. The terms of the commitment agreement shall include, but shall not be limited to, the following:

i. A requirement that the qualified venture fund shall invest a minimum of 50 percent of its funds in New Jersey based businesses within the earlier of the qualified venture fund's investment period or ten years. The total size of the qualified venture fund shall be determined at the qualified venture fund's final closing date;

ii. At the qualified venture fund's option, a requirement that the venture fund shall invest a minimum of 50 percent of its funds in diverse entrepreneurs;

iii. A requirement that the venture fund shall make calls of a minimum of 80 percent of the irrevocable contractual commitments within the earlier of the initial term of the

qualified venture fund or ten years. The initial term shall be determined based on the governing agreement between the investor and the fund;

iv. A requirement that the investor shall satisfy 100 percent of the capital call commitment's from the qualified venture fund;

v. A provision permitting the Authority to recapture, absent extenuating circumstances, from either the venture fund or the investor, based upon who fails to perform. The recapture amount shall be equal to a prorated amount of the tax credits if the qualified venture fund or investor does not comply with iii or iv above, an amount equal to the total tax credits if the qualified venture fund does not comply with i above, or an amount equal to the increase in tax credits if the qualified venture fund does not comply with ii. above, if as applicable. Such recapture 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; and

vi. A requirement for the qualified venture fund to submit to the Authority an annual review report in a format as may be determined by the Authority, which shall contain the following information:

(1) A list of any capital calls of the investor's irrevocable contractual commitment that have been made and the date of the capital call(s);

(2) The qualified venture fund's financial statement for the most recent year prepared by an independent certified public accountant, including all investment schedules;

(3) Documentation demonstrating the transfers of cash from the investor to the qualified venture fund in response to the capital call(s), including, but not limited to, a subscription agreement, capital call letters, and bank records or statements;

(4) Documentation demonstrating to the transfer of funds from the qualified venture fund to businesses, including, but not limited to, stock purchase agreements and detailed bank records or statements;

(5) Certification(s) of minority- or women-owned business from the State of New Jersey to confirm investments in diverse entrepreneurs, applicable if the bonus in N.J.A.C. 19:31-19.6(a)2 was part of the qualified investment approval;

(6) A limited partner roster with final commitment amounts;

(7) A current list of portfolio companies with investment amounts, office location, and full-time employee totals of the portfolio companies; and

(8) A certification from the qualified venture fund's general partner indicating whether the general partner is aware of any condition, event, or act that would cause the qualified venture fund not to be in compliance with the approval, the Act, the commitment agreement, or this subchapter; and

vi. A provision permitting an audit from time to time, as the Authority deems necessary, of the evidence and documentation of the qualified venture fund supporting the annual review reports;

vii. A provision permitting the Authority to amend the commitment agreement;

viii. A provision establishing the conditions under which the Authority, the qualified venture fund, the investor, or any of them, may terminate the agreement;

ix. Indemnification and insurance from the qualified venture fund and the investor to benefit the Authority; and

x. Default and remedies, including, but not limited, to a default if the qualified venture fund made a material misrepresentation in any annual review report; and

3. Upon the receipt of the executed commitment agreement, the Authority shall notify the Division of Taxation of the approval, and the Division of Taxation shall then issue the tax credit certificate to the applicant investor.

(e) [(d)] An applicant investor may appeal the Authority's action by submitting in writing to the Authority, within 20 days from the effective date of the Authority's action, an explanation as to how the investor, the New Jersey emerging technology business, and/or the New Jersey emerging technology business holding company has met the program criteria. Appeals will be handled by the Authority as follows:

1.-3. (No change.)

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.

19:31-19.8 Cap on total credits

(a) The amount of credits approved by the Authority, in consultation with the Director, pursuant to P.L. 2013, c. 14 (N.J.S.A. 54A:4-13), shall not exceed a cumulative total of [\$25 million] **\$35 million in any calendar year to apply against the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) and the tax imposed pursuant to the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq.**

(b) (No change.)

**GROW NEW JERSEY ASSISTANCE PROGRAM (GROW NJ)
MODIFICATIONS**

MEMORANDUM

To: Members of the Authority

From: Tim Sullivan
Chief Executive Officer

Date: July 14, 2021

SUBJECT: Sanofi US Services Inc. ("Sanofi") – Modification
Grow New Jersey Assistance Program ("Grow NJ") – P44310
\$39,943,970 Grow NJ

Request:

Consent to the following changes to the Grow NJ approval:

- 1) Reduce the square footage of the non-industrial qualified business facility ("QBF") at 55 Corporate Drive, Bridgewater from 674,325 sf to 321,180 sf (a 52% decrease) by removing Building C which had 207,176 sf, and reducing Building B from 200,133 sf to 54,164 sf, a reduction of 145,969 sf. This results in a total reduction of 353,145 sf.
- 2) Decrease the amount of capital investment from \$39,947,182 to \$ 27,111,547 (a 32% change).
- 3) Decrease the number of retained jobs from 2,099 to 1,774 (a 15% change). There were no new jobs in the approved award.

As a result of these changes the overall 10-year tax credit will be reduced from \$39,943,970 to \$27,106,720 (a 32% change). Board action is required because the proposed reduction to total square footage, capital investment and award exceeds the 25% delegation threshold for staff to approve such a change.

Background:

On August 8, 2017 EDA's Board approved Sanofi for a \$39,943,970 10-year Grow NJ tax credit based on the retention of 2,099 full time jobs at the Bridgewater Township location, an existing non-industrial premises consisting of 674,325 sf which will be refurbished as its QBF. Two six-month certification extensions were approved to extend the certification of project completion deadline to August 8, 2021.

Subsequent to its approval, Sanofi S.A., its parent company, underwent a corporate leadership change and the new leadership team required a review of all real estate holdings. The review has resulted in the company deciding to reduce the size of the QBF, which would require an adjustment to the minimum capital investment. Additionally, the company is taking a second review of other real estate opportunities in the New Jersey-Metropolitan area to potentially locate other operations, which will have no impact on the Grow NJ award or the related employees.

Further, Sanofi has decreased the intended jobs at the site based on its determination to eliminate certain research and development functions that were originally intended at the site. Sanofi has also determined not to replace employees lost to attrition over the last year.

Sanofi is now requesting a modification to its approved Grow NJ award to reduce the square footage of the QBF, decrease anticipated capital investment and decrease its retained jobs. The original project included Building A (267,016 sf), Building B (200,133 sf), and Building C (207,176 sf). Sanofi would like to remove Building C which had 207,176 sf, and remove floors 2, 3 and 4 of Building B (a reduction of 145,969 sf). In total, the QBF square footage would decrease from 674,325 sf to 321,180 sf (a 52% change).

To date, Sanofi has completed the approved project, exceeding the original anticipated capital investment of \$39,947,182 across all three buildings comprising the original QBF of which \$27,111,547 was spent on the proposed project. The request to decrease the anticipated capital investment is related to removing Building C which had a capital investment of \$7.1 million and the removal of floors 2, 3 and 4 from Building B, representing capital investment of \$6.7 million.

To better understand the difference between the approved project and proposed modification, staff compared the cost benefit analysis (“CBA”) for the QBF as originally proposed with all three buildings, to the modified QBF of Building A, and the first floor of Building B. The CBA comparison evidences that the remaining space is \$486.7 million less expensive than the originally approved project over the 15-year grant commitment duration on a Net Present Value basis.

The Grant Calculator for the modified project determined the revised award to be \$27.1 million. The net economic benefit analysis at approval used the current model. The net economic benefit for the modified project is \$497.7 million over 20 years. As a result of the proposed changes, the overall 10-year tax credit will be reduced from \$39.9 million to \$27.1 million and the updated minimum capital investment will be reduced from \$26,973,000 to \$12,847,200. While the decrease in size and capital investment at the QBF are significant, staff recommends the changes to the project as the net economic benefit and jobs committed to the State remain significant and the project remains essentially the same, albeit smaller.

Board action is required because the proposed changes to the size, capital investment, and award at the QBF exceed the 25% delegation threshold for staff to approve such changes.

There were unpaid fees with the Department of Labor, which the applicant has represented have been paid. Staff's recommendation and thus the Board's approval is based on that representation.

<u>Summary of Project Changes:</u>	<u>Original</u>	<u>Proposed Modification</u>
Qualified Business Location	55 Corporate Drive, Bridgewater Building A, B and C	55 Corporate Dr. Bridgewater Bldg A, and 1st fl. Bldg B
Total Project SqFt	674,325	321,180
Minimum Capital Investment	\$26,973,000	\$12,847,200
Estimated Eligible Capital Investment	\$39,947,182	\$27,111,547
New Jobs	0	0
Retained Jobs	2,099	1,774
Per Job Award Amount (*)	\$1,903	\$1,528
Award Amount (Grant Calculator)	\$39,943,970	\$27,106,720
Gross Benefits to the State (prior to award)	\$505,451,457 over 20 years	\$524,846,835 over 20 years
Net Benefit to the State (Net of Award)	\$465,507,487 over 20 years	\$497,740,115 over 20 years

(*) - the award will be recalculated at certification and may result in a lower per job award amount.

Recommendation

Consent to the following changes to the Grow NJ approval:

- 1) Reduce the square footage of the non-industrial QBF at 55 Corporate Drive, Bridgewater from 674,325 sf to 321,180 sf (a 52% decrease) by removing Building C which had 207,176 sf, and reducing Building B from 200,133 sf to 54,164 sf, a reduction of 145,969 sf. This results in a total reduction of 353,145 sf.
- 2) Decrease the amount of capital investment from \$39,947,182 to \$ 27,111,547 (a 32% change).
- 3) Decrease the number of retained jobs from 2,099 to 1,774 (a 15% change). There were no new jobs in the approved award.

As a result of these changes the overall 10-year tax credit will be reduced from \$39,943,970, to \$27,106,720 (a 32% change). Board action is required because the proposed reduction to total square footage, capital investment and award exceeds the 25% delegation threshold for staff to approve such a change.

This approval is conditional upon confirmation from the Department of Labor that the payment of outstanding fees was made, and nothing remains unpaid.

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

Prepared by:

Robert Carroll

Mark Chierici



MEMORANDUM

To: Members of the Authority

From: Tim Sullivan
Chief Executive Officer

Date: July 14, 2021

SUBJECT: **M&A Holdings Co. L.L.C.** (“M&A” or “Company”) – Modification
Grow New Jersey Assistance Program (“Grow NJ”) – P44849
\$5,400,000 Grow NJ

Request:

Modify the definition of “Project” within the Grow NJ Incentive Agreement to exclude the replacement of the fire suppression system.

Modify the Grow NJ Incentive Agreement to add a condition requiring the replacement of the fire suppression system by February 14, 2025 or such later date as the Landlord is able to undertake the project if the later date is not due to any action or inaction by M&A.

Staff delegated approval allows approval of decreases in anticipated eligible project costs of up to 25%. However, as the fire suppression system was listed expressly as part of the defined project, staff is seeking Board consideration. Approval of this proposed modification will not result in any change to the approved award.

Background:

M&A Holdings Co. L.L.C. dba Camden Yards Steel was founded in 2001 and buys prime steel that is processed into steel sheets, plates, and coils for sale and distribution to manufacturers that produce products including lighting fixtures, truck and trailer parts, cabinets and furniture, and tools and dies.

On February 13, 2018, the Members approved a \$5,400,000 10-year Grow NJ award to incent the creation of 8 new Grow eligible jobs and retention of 32 Grow eligible jobs at an existing 111,317 square foot industrial premises. At the time of approval, M&A’s landlord, South Jersey Port Corporation (“SJPC”) was cited with a fire code violation on the site, which would have enabled M&A to break its lease at the site and as a result, M&A’s existing jobs were deemed at risk. The

total estimated capital investment for the Grow project was \$4,744,952. The Incentive Agreement defines the “project” as “the renovation of the Qualified Business Facility to replace the fire suppression system, and place new machinery and equipment into service...”. It was anticipated that M&A would contribute \$150,000 to SJPC toward the system that would be replaced by December 31, 2018.

On September 2020, M&A certified project completion and are currently operational. M&A spent \$5,000,000 on its capital investment and reported 40 jobs at the Qualified Business Facility. As the certification package was being reviewed, staff requested information on the replacement of the fire suppression system and learned that although M&A stated it was willing and able to deposit \$150,000 in escrow, the fire suppression system had not yet been replaced by the landlord. Instead safety requirements were being satisfied with a 24/7 fire watch. Because of the definition of “project” as explained above, staff determined that the project could not be deemed complete.

M&A seeks to remove the fire suppression system from the definition of “Project” to allow the project to be determined complete and to finalize the project completion certification process.

M&A indicated that its landlord had committed in writing to replace the fire suppression system by December 31, 2018, but the landlord later informed M&A that it would need until February 14, 2025, beyond M&A’s project completion certification deadline, to replace the fire suppression system. This date was memorialized in a lease between the parties. M&A argues that it was willing to pay the \$150,000 to SJPC for its share of the cost of the system, however, it has no control over the time within which the SJPC replaces the system.

To better understand the situation with the fire suppression system Staff contacted SJPC and learned the following.

SJPC confirmed with Staff that the Department of Community Affairs (“DCA”) still required the fire suppression system to be replaced. SJPC had experienced some changes in its upper management ranks in early 2018, which caused some disruptions to its planned capital expenditures. This led to the fire suppression system being substantially delayed from the original target date for completion. Staff also learned that due to the size of the project it was not anticipated that it would be completed by December 31, 2018, and that it needed to be designed and staged, which is why completion of the fire suppression system would not happen for several years. Initial discussions with DCA were held in mid-April 2021 with a follow-up meeting scheduled in mid May 2021.

EDA staff contacted the Division of Fire Safety at the DCA regarding this project and were able to confirm the ongoing need for the replacement of the fire suppression system.

M&A has completed the necessary capital investment and hired the amount of people agreed to in this Grow NJ project. However, as the at-risk jobs were predicated on the fact that the fire suppression system was critical to M&A’s eligibility for the program, staff recommends that a condition be added to the Incentive Agreement requiring that the fire suppression system be replaced by February 14, 2025 or such later date as the Landlord is able to undertake the project if the later date is not due to any action or inaction by M&A. The failure of SJPC to replace the

fire suppression system by that date due to any action or inaction of M&A, including failure to contribute \$150,000 toward the project would result in a default to the Incentive Agreement and would require full repayment of tax credits issued and termination of the Incentive Agreement.

Approval of this proposed modification would permit the Servicing Officer to request to the Division of Taxation issuance of M&A's 2021 Overall Tax Credit Certificate.

Recommendation

Modify the definition of "Project" within the Grow NJ Incentive Agreement to exclude the replacement of the fire suppression system.

Modify the Grow NJ Incentive Agreement to add a condition requiring the replacement of the fire suppression system by February 14, 2025 or such later date as the Landlord is able to undertake the project if the later date is not due to any action or inaction by M&A.

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

Tim Sullivan, CEO

Prepared by:
Mark Chierici

FILM 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.

As amended by law on 7/2/2021, the eligible tax credit for qualified film production expenses increased from 30% to 35% for applications received after Jan 7, 2021. Additionally, for applications received after July 2, 2021, the program amendment also eliminates the targeted county bonus and specifies a tax credit of 30% for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New, York.

APPLICANT: Union Square Productions Inc.

PROD-00264159

APPLICANT BACKGROUND:

Union Square Productions Inc. is the production company responsible for “A Good Person”. The story follows 25-year-old Allison (Florence Pugh) discovering a newfound will to live after unexpectedly connecting with 83-year-old Daniel (Morgan Freeman) as they grieve the same tragic loss.

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	\$12,697,311
B. Total Post-Production Expenses	\$867,543
C. Total expenses for services performed and goods purchased through vendors authorized to do business in New Jersey (excluding any post-production expenses)	\$10,812,813
Percentage Calculation = C/(A-B)	91.40%

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.	\$10,812,813
Criterion Met	Yes

AWARD CALCULATION

Base Award Criteria	Calculation	Result
35% of Qualified Film Production Expenses	$\$10,812,813 \times 35\% =$	\$3,784,484.55
Bonus Criteria Met		
Submission of Diversity Plan deemed satisfactory by EDA and NJ Taxation. 2% of Qualified Film Production Expenses.	$\$10,812,813 \times 2\% =$	\$216,256.26
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		\$4,000,740.81

APPLICATION RECEIVED DATE:	5/24/2021 (Application #57)
DATE APPLICATION DEEMED COMPLETE:	6/10/2021
PRINCIPAL PHOTOGRAPHY COMMENCEMENT:	10/18/2021
PRINCIPAL NJ PHOTOGRAPHY LOCATION:	South Orange, NJ
ESTIMATED DATE OF PROJECT COMPLETION:	11/26/2021

APPLICANT'S FISCAL YEAR END:	12/31/2021
TAX CREDIT VINTAGE YEAR(S):	2021
TAX FILING TYPE:	Corporate Business Tax
ANTICIPATED CERTIFICATION DATE:	6/15/2022

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

The Garden State Film and Digital Media Jobs Act originally provided a total of \$75 million in tax credits for State Fiscal Year 2019 and increased to \$100 million as amended by law on 1/21/2020. As a result, \$100 million of film tax credits are available for State Fiscal Year 2022. After today's approvals, \$57.8 million remains in the program for State Fiscal Year 2022. However, there are 24 additional applications in the pipeline totaling \$95.8 million and therefore being over-subscribed for State Fiscal Year 2022.

APPROVAL REQUEST:

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

APPROVAL OFFICER: 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.

As amended by law on 7/2/2021, the eligible tax credit for qualified film production expenses increased from 30% to 35% for applications received after Jan 7, 2021. Additionally, for applications received after July 2, 2021, the program amendment also eliminates the targeted county bonus and specifies a tax credit of 30% for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New, York.

APPLICANT: Universal Television LLC

PROD-00258408

APPLICANT BACKGROUND:

Universal Television LLC is the production company responsible for “Equalizer S1”. The series follows Robyn McCall, an enigmatic woman with a mysterious background. McCall comes across to most as an average single mom who is quietly raising her teenage daughter but to a trusted few she is "The Equalizer", an anonymous guardian angel and defender of the downtrodden.

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	\$120,284,034
B. Total Post-Production Expenses	\$5,054,231
C. Total expenses for services performed and goods purchased through vendors authorized to do business in New Jersey (excluding any post-production expenses)	\$102,711,066
Percentage Calculation = C/(A-B)	89.13%

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.	\$102,711,066
Criterion Met	Yes

AWARD CALCULATION

Base Award Criteria	Calculation	Result
35% of Qualified Film Production Expenses	$\$102,711,066 \times 35\% =$	\$35,948,873.10
Bonus Criteria Met		
Submission of Diversity Plan deemed satisfactory by EDA and NJ Taxation. 2% of Qualified Film Production Expenses.	$\$102,711,066 \times 2\% =$	\$2,054,221.32
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		\$38,003,094.42

APPLICATION RECEIVED DATE:

4/27/2021 (Application #55)

DATE APPLICATION DEEMED COMPLETE:

6/9/2021

PRINCIPAL PHOTOGRAPHY COMMENCEMENT:

11/9/2020

PRINCIPAL NJ PHOTOGRAPHY LOCATION:

East Rutherford Borough

ESTIMATED DATE OF PROJECT COMPLETION:	5/28/2021
APPLICANT'S FISCAL YEAR END:	12/31/2021
TAX CREDIT VINTAGE YEAR(S):	2021
TAX FILING TYPE:	Corporate Business Tax
ANTICIPATED CERTIFICATION DATE:	12/31/2021

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

The Garden State Film and Digital Media Jobs Act originally provided a total of \$75 million in tax credits for State Fiscal Year 2019 and increased to \$100 million as amended by law on 1/21/2020. As a result, \$100 million of film tax credits are available for State Fiscal Year 2022. After today's approvals, \$57.8 million remains in the program for State Fiscal Year 2022. However, there are 24 additional applications in the pipeline totaling \$95.8 million and therefore being over-subscribed for State Fiscal Year 2022.

APPROVAL REQUEST:

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

APPROVAL OFFICER: 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.

As amended by law on 7/2/2021, the eligible tax credit for qualified film production expenses increased from 30% to 35% for applications received after Jan 7, 2021. Additionally, for applications received after July 2, 2021, the program amendment also eliminates the targeted county bonus and specifies a tax credit of 30% for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New, York.

APPLICANT: Apophenia LLC

PROD-00224123

APPLICANT BACKGROUND:

Apophenia LLC is the production company responsible for “Apophenia”, a film about a man’s inability to integrate his shadow side into his conscious life and how this inability will ultimately lead to his destruction.

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	\$1,049,845
B. Total Post-Production Expenses	\$45,000
C. Total expenses for services performed and goods purchased through vendors authorized to do business in New Jersey (excluding any post-production expenses)	921,350
Percentage Calculation = $C/(A-B)$	91.69%
Criterion Met	Yes

2. **Qualified Film Production Expenses:** During a single privilege period, the film must have more than \$1 million in qualified film production expenses. “Qualified film production expenses” are expenses incurred in New Jersey after July 1, 2018 for the production of a film, including pre-production costs and post-production costs. “Qualified film production expenses” shall include, but shall not be limited to: wages and salaries of individuals employed in the production of a film on which the New Jersey Gross Income Tax has been paid or is due; and, the costs for tangible personal property used and services performed in New Jersey, directly and exclusively in the production of the film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payments made to a loan out company or to an independent contractor shall not be a “qualified film production expenses” unless the payments are made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by N.J.A.C. 19:31-21.3(c). “Qualified film production expenses” shall not include: expenses incurred in marketing or advertising a film; and payment in excess of \$500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines. The following qualified film production expenses are projected by the applicant to be incurred in New Jersey:

Total Qualified Film Production Expenses incurred in NJ in two privilege periods, of which at least \$1 million is incurred in a single privilege period after July 1, 2018.	\$966,950
Criterion Met	No

AWARD CALCULATION

Base Award Criteria	Calculation	Result
30% of Qualified Film Production Expenses	\$966,950 x 30% =	\$290,085
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		\$290,085

APPLICATION RECEIVED DATE:

8/11/2020 (Application #51)

DATE APPLICATION DEEMED COMPLETE:

4/30/2021

PRINCIPAL PHOTOGRAPHY COMMENCEMENT:

8/13/2020

PRINCIPAL NJ PHOTOGRAPHY LOCATION:

Newton Town, NJ

ESTIMATED DATE OF PROJECT COMPLETION:

7/31/2021

Apophenia LLC

New Jersey Film and Digital Media Tax Credit Program

Page 3

APPLICANT'S FISCAL YEAR END:	12/31/2021
TAX CREDIT VINTAGE YEAR(S):	2021
TAX FILING TYPE:	Gross Income Tax
ANTICIPATED CERTIFICATION DATE:	8/31/2021

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

The Garden State Film and Digital Media Jobs Act originally provided a total of \$75 million in tax credits for State Fiscal Year 2019 and increased to \$100 million as amended by law on 1/21/2020. As a result, \$100 million of film tax credits are available for State Fiscal Year 2022. After today's approvals, \$57.8 million remains in the program for State Fiscal Year 2022. However, there are 24 additional applications in the pipeline totaling \$95.8 million and therefore being over-subscribed for State Fiscal Year 2022.

APPROVAL REQUEST:

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

APPROVAL OFFICER: S. Novak

BOND PROJECTS

BOND RESOLUTIONS



MEMORANDM

To: Members of the Authority

From: Tim Sullivan
Chief Executive Officer

Date: July 14, 2021

Subject: Linden Renewable Energy, LLC PROD-00228622 Volume Cap Renewal Resolution.

Summary

The Members are requested to approve a Volume Cap Renewal Resolution (see Attachment A) for Linden Renewable Energy, LLC. The resolution will renew the Authority's volume cap allocation for the issuance of bonds and grant the Applicant a new 60-day period with an additional 30-day extension to close on the approved project. The aggregate principal amount will not exceed \$195,000,000.

Background

On April 14, 2021, the Authority approved a final bond resolution for Linden Renewable Energy, LLC authorizing the issuance of tax-exempt bonds not to exceed \$195,000,000. The bond proceeds will be used primarily to develop an organic waste anaerobic digester facility and to a lesser degree fund a debt service reserve fund, pay interest on the bonds during the construction, and pay the cost of issuance. The original approval is attached as Attachment B.

Pursuant to Section 12 of the April 14, 2021 Bond Resolution (see Exhibit C attached), the Authority's allocation of \$195,000,000 of State volume limitation will cease to be effective 60 days from the April 14, 2021 Bond Resolution not inclusive of a 30 days extension that may be approved at the discretion of the Authority. The applicant and its bond counsel have communicated to EDA staff that the Series 2021 Bonds will not be issued within the 60-day period even if an additional 30-day extension was granted. Bond closing is taking longer than anticipated due to delays in engineering, procurement, and drafting of the construction contract and operation and maintenance agreement. The project has also been delayed reflecting one remaining project approval required from NJDEP. The Applicant has assured EDA staff that it is diligently proceeding to closing with respect to the bonds.

Recommendation

It is recommended that the Members approve the Volume Cap Renewal Resolution for Linden Renewable Energy, LLC and renew the Authority's volume cap allocation up to \$195,000,000 for the issuance of bonds and grant the Applicant a new 60-day period with an additional 30-day extension to close on the approved project.



Tim Sullivan, CEO

Prepared by: Steven Novak

Attachments:

- Attachment A – Linden Renewable Energy, LLC Volume Cap Renewal Resolution
- Attachment B – Linden Renewable Energy, LLC Project Summary PROD-00228622 April 14, 2021
- Attachment C – Linden Renewable Energy, LLC Bond Resolution Adopted: April 14, 2021

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**Stand-Alone Bond****APPLICANT:** Linden Renewable Energy, LLC

PROD-00228622

PROJECT USER(S): Same as applicant**PROJECT LOCATION:** 4900 Tremley Point Road Linden City Union**APPLICANT BACKGROUND:**

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

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

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

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

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

OTHER NJEDA SERVICES:

None

APPROVAL REQUEST:

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

This project is being presented for final approval.

FINANCING SUMMARY:

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

ESTIMATED PRODUCT COSTS:

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

TOTAL COSTS: \$241,579,674.00

JOBS:

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

PUBLIC HEARING: 4/14/2021

BOND COUNSEL: McCarter & English, LLP

DEVELOPMENT OFFICER: Monika Athwal

UNDERWRITER OFFICER: Steven Novak

LOANS/GRANTS/GUARANTEES

DIRECT LOAN PROGRAM

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**Direct Loan****APPLICANT:** Fort Monmouth Economic Revitalization Authority

PROD-00283199

PROJECT USER(S): Same as applicant**PROJECT LOCATION:** 401 Caren Franzini Way Oceanport Borough Monmouth**APPLICANT BACKGROUND:**

Fort Monmouth Economic Revitalization Authority ("FMERA") is a public body corporate and politic constituted as an independent authority and instrumentality of the State of New Jersey.

FMERA was created in August of 2010 to provide investment, continuity and economic growth to the communities impacted by the federal government's decision to close the US Army base. FMERA manages the revitalization of the 1,126 acres of real estate at Fort Monmouth (located in the boroughs of Oceanport, Tinton Falls and Eatontown) following the base closure in September 2011 that displaced more than 5,500 jobs. FMERA has a multitude of tools available for reuse and redevelopment of the site including: undertaking redevelopment projects; adopting development and design guidelines; adopting land use regulations regarding the provision of utilities, streets, roads or other infrastructure required for the implementation of the revitalization plan. Because FMERA is a governmental entity that undertakes and promotes development and redevelopment that will create jobs and increase the tax base of the three host boroughs and the County of Monmouth, EDA is authorized to make loans to FMERA. Additionally, under the FMERA Act, FMERA is staffed with EDA employees, and FMERA has the power to receive State loans and specifically to obtain a loan from EDA for costs of the FMERA office based on an approved budget.

This project involves the refinancing of bonds issued by Monmouth County Improvement Authority which mature on 11/9/21.

OTHER NJEDA SERVICES:

PROD 129283 and 187575 were both \$5 million direct loans which mature 1/1/23 and 10/1/24, respectively and are in compliance.

APPROVAL REQUEST:

Approval is recommended for a direct loan of up to \$21,782,000.

FINANCING SUMMARY:**LENDER:** NJEDA**AMOUNT OF LOAN:** Up to \$21,782,000

TERMS OF LOAN: Fixed for five years at closing at the greater of the five-year US Treasury rate or 2%. Monthly payments of interest. 60-month term. Repayment of principal based on 25% of net proceeds received by FMERA on Phase 2 parcels with all outstanding principal and interest due upon maturity.

PRODUCT COSTS:

Finance Fees	\$381,185.00	Refinancing	\$21,782,000.00
--------------	--------------	-------------	-----------------

TOTAL COSTS:	\$22,163,185.00
---------------------	------------------------

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
8	8	0	0
Jobs on related application	PROD-00187575		

DEVELOPMENT OFFICER: Kathy Durand**UNDERWRITER OFFICER:** Michael Conte



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: July 14, 2021

SUBJECT: Fort Monmouth Economic Revitalization
Authority PROD 283199

Request:

Approval is requested for a direct loan for up to \$21,782,000 to Fort Monmouth Economic Revitalization Authority ("FMERA") to repay the current principal balance owed on bonds issued by the Monmouth County Improvement Authority ("MCIA"). MCIA originally provided \$33.5 million in five-year financing which closed on November 9, 2016, in conjunction with the closing with the Army on Phase 2 properties. MCIA debt is secured by the Phase 2 properties owned by FMERA and contains a five-year guarantee provided by the Monmouth County Board of County Commissioners. The security for the proposed loan will be Phase 2 properties. The MCIA debt matures on November 9, 2021 and bond documents require funds be placed into escrow on October 9, 2021 as MCIA has requested that FMERA find alternative financing sources to repay the entire balance at maturity. The proposed loan will have an interest rate equal to the greater of the five-year US Treasury or 2% fixed at closing. The term of the loan is 60 months. Monthly payments of interest will be due on the loan with all outstanding principal and interest due upon maturity.

The Authority has made two \$5 million working capital loans to FMERA under Prod 129283 and Prod 187575 (referred to as Loan 1 and Loan 2, respectively or collectively as Loans). Both loans are risk rated as Substandard and all payments have been made according to terms. The requested loan will also be risk rated as Substandard. The funding source for the proposed loan is the Economic Recovery Fund.

Background:

FMERA is a public body corporate and politic constituted as an independent authority and instrumentality of the State of New Jersey. FMERA was created in August of 2010 to provide investment, continuity and economic growth to the communities impacted by the federal government's decision to close the US Army base. FMERA manages the revitalization of the 1,126 acres of real estate at Fort Monmouth (located in the boroughs of Oceanport, Tinton Falls

and Eatontown) following the base closure in September 2011 that displaced more than 5,500 jobs. FMERA has a multitude of tools available for reuse and redevelopment of the site including undertaking redevelopment projects; adopting development and design guidelines; adopting land use regulations regarding the provision of utilities, streets, roads or other infrastructure required for the implementation of the revitalization plan. Because FMERA is a governmental entity that undertakes and promotes development and redevelopment that will create jobs and increase the tax base of the three host boroughs and the County of Monmouth, EDA is authorized to make loans to FMERA. Additionally, under the FMERA Act, FMERA is staffed with EDA employees, and FMERA has the power to receive State loans, specifically to obtain a loan from EDA for costs of the FMERA office based on an approved budget.

Through two separate agreements with the U.S. Department of Army, FMERA purchased the Fort Monmouth property. Essentially, all of the Tinton Falls area of the Fort, most of the Eatontown area, and a small portion of the Oceanport area comprise Phase 1. FMERA purchased Phase 1 based on an agreement to share the sales proceeds. A portion of the Eatontown area and most of the Oceanport area comprise Phase 2. FMERA paid in full for Phase 2 with bond financing from the MCIA.

FMERA has been selling properties periodically over the past five years, however, the timing and closing of these sales has taken longer than anticipated and created the demand for the prior two Authority loans. Depending on the actual closing on sales of parcels, FMERA may need additional working capital loans to support their operations to cover costs for salaries, legal, architectural, engineering, trunk infrastructure and debt service. Additional time for FMERA to obtain proceeds from parcel sales is caused by the time associated with activities such as Requests for Offers to Purchase, contract negotiations, municipal and county approvals and environmental clean-up by the Army. The Authority has made two prior loans to FMERA as highlighted below.

Loan 1 – Prod 129283

Original loan amount was \$5 million which closed on 12/28/17. This loan had a 12-month drawdown feature and was fully utilized via two drawdowns; \$1.8 million on 12/28/17 and \$3.2 million on 8/13/18. Balance outstanding was \$3.13 million as of 6/15/21 and accrues interest at a fixed rate of 2.23%. The loan matures on 1/1/23. The NJEDA security is a first mortgage on Phase 1 properties and a second mortgage on Phase 2 properties (behind MCIA). With the proposed loan fully retiring MCIA, the Authority would have a first mortgage position on Phase 2 properties to secure Loan 1. Aside from payments of interest monthly, there have been seven lump sum principal payments to the Authority by FMERA generated from net sale proceeds of parcels aggregating \$1.87 million. This loan is anticipated to be fully repaid from net sales proceeds of parcel payments of \$3.13 million in 2022.

Loan 2 - Prod 187575

Original loan amount was \$5 million which closed on 9/26/19. Loan had a 12-month drawdown feature and was fully utilized. Balance outstanding was \$4.21 million as of 6/15/21 and accrues interest at a fixed rate of 2%. The loan matures on 10/1/24. Security for Loan 2 is a second

mortgage on Phase 1 parcels (behind EDA for Loan 1).

Phase 1 and Phase 2 properties include approximately 125 acres identified as environmental carve-outs which may or may not be included in the estimated value of parcel sales. Identification of all Phase 1 and Phase 2 parcels are enumerated in EDA loan documents. Specifically pertaining to the Loans for the purpose of calculating the amount due to EDA, net proceeds to FMERA is after payments to the Army, FMERA Homeless Trust, MCIA and payments on the original EDA loans.

Phase 1 properties expected to be sold in the remainder of 2021 and throughout 2022-2024 have an estimated aggregate gross value of \$21.3 million with net proceeds to FMERA of \$2.5 million (after applying loan payments).

Phase 2 properties expected to be sold in the remainder of 2021 and throughout 2022-2024 have an estimated aggregate gross value of \$113.8 million with net proceeds to FMERA of \$76.8 million (after applying loan payments).

Based on FMERA's current projections, Loan 1 is anticipated to receive principal reductions of 20% of the Phase 2 net property proceeds of \$3.1 million in 2022 to fully repay the loan. Loan 2 is anticipated to receive principal reductions of 50% of net property proceeds received by FMERA (with one exception being 70% of net proceeds received by FMERA from the sale of the Phase 1 portion of Parcel B) amounting to \$0.9 million, \$0.1 million and \$3.2 million in 2022, 2023 and 2024, respectively, which will fully repay the loan. Net proceeds from sales of parcels in Phase 1 are subject to a sharing arrangement with the US Department of the Army; whereby, on average approximately 37% of net proceeds are retained by FMERA. Additionally, as required by federal law and the Phase 1 and Phase 2 agreements with the U.S. Department of the Army, there are mandatory contributions to the FMERA Homeless Trust from both Phase 1 and Phase 2 proceeds based upon a per acre allocation.

The principal on the proposed loan will have principal reductions of 25% of the Phase 2 net proceeds received by FMERA estimated at \$5.4 million and \$16.4 million in 2021 and 2024, respectively. That is assuming the entire \$21.78 million is drawn. There is a 0.875% commitment and 0.875% closing fee due from FMERA to the EDA based on the amount of the proposed loan which is disbursed at closing.

The cash flow forecast prepared by FMERA reflects full repayment of the proposed loan by 2024. This assumes \$21.78 million as the MCIA payoff amount. Due to three Phase 2 parcels currently under sales agreements (Barker Circle/Firehouse/ Museum, Lodging Area and Allison Hall) for an aggregate \$22.5 million with FMERA net proceeds share of \$16.2 million, should any or all of these parcels close prior to the closing of this proposed loan and retirement of MCIA's loan, then up to \$5.4 million in payments would be made to MCIA reducing the remaining outstanding balance to as low as \$16.4 million.

MCIA debt was renewed on 11/9/20 at a fixed interest rate of 2% fixed when FMERA made a principal payment of \$1 million generated from the sale of one parcel. The outstanding balance on this loan at 12/31/20 was \$22.19 million. 25% of Phase 2 parcels net sale proceeds are

escrowed at time of closing plus 50% of excess cash over \$3 million to be applied annually against MCIA debt. In 2021, two payments have been made into the escrow account and will be used to pay down the principal when the notes mature. The first was \$78,000 which was calculated based on excess cash at 12/31/20 and the second was \$325,000 from a Phase 2 property sale. The proposed loan will ensure the balance owed on this debt to MCIA is fully repaid by its maturity. It is noted that the bond documents require the principal and interest on the MCIA loan be deposited into their escrow account at US Bank account by October 9, 2021.

Approximately 484 acres have been sold to date by FMERA since 2013. The sales were comprised of 29 parcels of which 13 are Phase 1 equating to 340 acres and 15 are Phase 2 equating to 144 acres and another 10 parcels equating to 130 acres are currently under contract or out for signature with aggregate estimated proceeds of \$27.5 million of which \$20.1 million will be net to FMERA. The figures are included in FMERA's estimate that aggregate sales proceeds in excess of \$135 million (\$21 million Phase 1 and \$115 million Phase 2) will be realized from June 2021 through 2024.

Projected annual expenses of FMERA are estimated to be approximately \$19.9 million in 2021, \$14.0 million in 2022, \$6.5 million in 2023 and \$57 million in 2024. Expenses include salaries and office expenses, maintenance of land, buildings and infrastructure, professional services, infrastructure requirements, payments to the Army, principal and interest on EDA loans, Homeless Trust Obligations and demolition. Infrastructure requirements and the maintenance of land and buildings are projected to increase from \$2.1 million in 2020 to \$7.2 million in 2021, \$3.0 million in 2022, \$2.3 million in 2023 and \$14.4 million in 2024. As a result, an additional \$4 million in working capital shortfalls are projected in years 2022 and 2023 from yet to be identified sources until most parcel sales occur in 2024. The projections exclude pending appropriations of \$12.5 million from the State of New Jersey and \$10.5 million from the Federal Coronavirus State Fiscal Recovery Fund which would have significant positive impact on the cash flow of FMERA. Payments made for the Homeless Trust obligation reduces cash flow and is estimated to total \$14.6 million per agreement with HUD over 20 years based on an estimated 723 developable acres (equating to \$20,055 per acre) forming the basis for the set aside per parcel sale.

Recommendation:

Approval is recommended for a direct loan of up to \$21,782,000 to fully retire the principal balance owed to MCIA as proposed due to the strong public purpose of revitalizing the Fort Monmouth site by FMERA. Enable delegated authority for staff to review any changes to the projections and to be able to accept such changes so long as the projections still show a reasonable ability for FMERA to repay the proposed loan.

Conditions:

1. Approval by FMERA's Board of the proposed EDA loan.
2. Satisfactory review of resolution(s) from FMERA's Board authorizing them to enter into the proposed loan agreements.

3. Authority to have assignment of net proceeds to FMERA from any parcels securing the loan which are currently subject to sales contracts (should any contracts be terminated then mortgages will be taken).
4. The proposed loan will be required to be paid in full at maturity or prior based upon FMERA paying the Authority 25% of their net proceeds from the sale of Phase 2 properties.
5. Specific mortgages permitted to be released (with subsequent loan paydowns, if applicable) upon approval by FMERA Board of sale of property and closing documentation.



Tim Sullivan
Chief Executive Officer

Prepared by: Michael A. Conte, Senior Credit and Real Estate Underwriter

HAZARDOUS DISCHARGE SITE REMEDIATION FUND



MEMORANDUM

TO: Members of the Authority
FROM: Tim Sullivan, Chief Executive Officer
DATE: July 14, 2021
SUBJECT: NJDEP Hazardous Discharge Site Remediation Fund Program

The following municipal project has been approved by the Department of Environmental Protection to perform remedial action activities. The scope of work is described on the attached product summary:

HDSRF Municipal Grant:

Prod 258778	Borough of National Park (Robert Hawthorne Sanitary Landfill)	\$ 672,484.75
-------------	--	---------------

Total HDSRF Funding –July 2021	\$672,484.75
---------------------------------------	---------------------

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

Tim Sullivan, CEO

Prepared by: Kathy Junghans

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**Hazardous Discharge Site Remediation - Government Facility****APPLICANT:** National Park Borough – Robert Hawthorne Sanitary Landfill

PROD-00258778

PROJECT USER(S): Same as applicant**PROJECT LOCATION:** Robert Hawthorne Sanitary Landfill/ National Park Landfill
Gloucester County

National Park Borough

APPLICANT BACKGROUND:

Between August 2007 and November 2020, Borough of National Park, identified as Block 111, Lots 1,2 & 3 received an initial grant in the amount of \$266,537 under P17808 and supplemental grants in the amount of \$104,946, P32343, \$63,931 under P40734, \$286,257 under P44798, \$264,516 under P45450, \$900,000 under P45638, \$447,293 under P46014, and \$831,083 under Product 218899 for preliminary assessment (PA), site investigation (SI) and remedial investigation (RI) at the project site which is a former landfill and has potential environmental areas of concern (AOCs). The Borough of National Park currently owns the project site and has satisfied proof of site control. It is the Borough's intent upon completion of the environmental remediation activities to redevelop the project site for renewable energy.

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

According to the HDSRF legislation, a grant can be awarded to a municipality, county or redevelopment entity authorized to exercise redevelopment powers up to 75% of the costs of remedial action for projects involving the redevelopment of contaminated property for recreation and conservation purposes, provided that the use of the property for recreation and conservation purposes is included in the redevelopment plan and is conveyed by a development easement, deed restriction for development or conservation easement for recreation and conservation purposes.

OTHER NJEDA SERVICES:

\$266,537, P17808; \$104,946, P32343; \$63,931, P40734; \$286,257, P44798; \$264,516, P45450; \$900,000, P45638
\$447,293, P46014; \$831,083, Product 218899

APPROVAL REQUEST:

Borough of National Park is requesting aggregate supplemental grant funding to perform RA in the amount of \$672,484.75 at the Robert Hawthorne Sanitary Landfill project site. Total grant funding including this approval is \$3,837,047.75.

FINANCING SUMMARY:**GRANTOR:** Hazardous Discharge Site Remediation Fund**AMOUNT OF GRANT:** \$672,484.75**TERMS OF GRANT:** No Interest; No Repayment**PROJECT COSTS:**

Remedial Action	\$672,484.75
EDA Administrative Cost	\$500.00

TOTAL COSTS:	\$672,984.75
---------------------	---------------------

DATE: 6/17/2021

AUTHORITY MATTERS

MEMORANDUM

To: Members of the Authority

From: Tim Sullivan, Chief Executive Officer

Date: July 14, 2021

Subject: One Gateway Center Property Owner LLC
First Amendment to the Newark Office Lease

Summary

To accommodate current and future needs for staff within the Newark Office, I request the Members approve: (1) the first amendment to the lease for the Newark Office with One Gateway Center Property Owner LLC (Landlord) to add 6,227 sf located on the 16th floor (the “Additional Leased Premises”), increasing the total leased premises to 16,844 sf; and (2) expending up to \$500,000 for fixtures, furniture and equipment, tenant improvements, and other costs related to the occupancy of the Additional Leased Premises.

Background

1. Initial Lease

From 2014 to 2019, the Authority leased Class B office space at 20 Commerce Street in Newark. Driven by a strategic decision to expand the Authority’s talent recruiting and convening ability in the northern part of the state, the Authority decided to look for alternative Class A space at the expiration of the Commerce Street office lease term.

The Real Estate department worked with the Executive Team and the Human Resources department to evaluate the Authority’s medium-term Newark space needs. At that time the Authority decided to investigate options between 10,000 and 12,000 sf. Staff issued a request for proposals to evaluate three potential office space options in downtown Newark. After determining that a 10,617 sf lease on the 14th floor in Gateway One was the best option for the Authority, the Governor’s Office requested use of 4,040 sf of the NJEDA space through an interdepartmental Use and Occupancy Memorandum of Understanding (MOU) with the Department of Property Management and Construction within Treasury (DPMC), leaving 6,577 sf available for the Authority’s use.

In December 2018, the Members approved (1) entering into the 10,617 sf lease on the 14th floor (the “Leased Premises”) with the Landlord and the MOU with DPMC and (2) expending up to \$2.845 million, which included \$.266 million from the Landlord as a tenant work allowance, for tenant improvements, move cost and fixtures furniture and equipment. The Authority paid \$1.571 million for these items and the balance of \$266,075 was paid by the Landlord’s tenant work allowance. The Newark lease term will expire at the end of February 2025.

The Authority's portion of the Leased Premises was originally designed for 34 employees and one receptionist, including 6 offices that are each occupied by 2 managers. Reducing the shared office to single occupancy due to COVID concerns decreases the existing occupancy to 28 workstations.

The rent plus electric per \$1.75 sf ("estimated cost") of the current 14th floor Leased Premises, net of the reimbursement from DPMC, is summarized in the following chart:

Existing Lease - Total 10,617 SF, 14th Floor							
Date	End	Year	Total \$RSF Due	RSF	Gross Ann. Total	DPMC Reimb.	Net Ann. Total
2/4/2020	2/3/2021	1st	\$37.75	10,617	\$400,791.75	(\$152,510.00)	\$248,281.75
2/4/2021	2/3/2022	2nd	\$38.83	10,617	\$412,258.11	(\$156,873.20)	\$255,384.91
2/4/2022	2/3/2023	3rd	\$39.94	10,617	\$424,042.98	(\$161,357.60)	\$262,685.38
2/4/2023	2/3/2024	4th	\$41.09	10,617	\$436,252.53	(\$166,003.60)	\$270,248.93
2/4/2024	2/28/2025	5th	\$42.27	10,617	\$486,178.97	(\$185,001.70)	\$301,177.27
TOTAL					\$2,159,524.34	(\$821,746.10)	\$1,337,778.24

2. First Lease Amendment

Due to very strong recruiting success in North Jersey, the Newark Office's available space was already oversubscribed prior to the pandemic. Over the last 16 months, the Authority's programmatic mandate has increased significantly. First the Authority has led the launch and operations for the majority of the state's small and micro business COVID-19 relief programs, including more than \$750 million of new programmatic appropriations. Second, the passage of the Economic Recovery Act of 2020 has created approximately 10 new economic development programs. Finally, NJEDA has been asked to support new sister organizations such as the Commission on Science, Innovation, and Technology, and the forthcoming Governor's Wind Institute.

These programmatic expansions, combined with COVID-19-related return-to-office employee spacing considerations, have meant that the Authority has reached its original planning assumption of needing between 10,000 and 12,000 sf sooner than expected. This has created an acute need for additional employee workstations in Newark. Adding the 6,227 sf 16th floor Additional Leased Premises to our existing Lease Premises will provide 12,784 sf for Authority use and seating for approximately 31 additional employees.

The 16th floor Additional Leased Premises has been built out by the Landlord, to a specification that is equivalent to the Authority's 14th floor Leased Premises, at its own cost and is available for near immediate occupancy in September 2021. At no additional cost, the Landlord also has offered to eliminate 3 offices from the floor plan to accommodate the Authority's needs.

The lease rate offered for the new 16th floor Additional Leased Premises is identical to the lease rates of the existing 14th floor Leased Premises. The estimated cost of the 16th floor Additional Leased Premises is summarized in the table immediately below:

Proposed Additional Leased Premises - 6,227 SF, 16th Floor

Date	End	Year	Total \$RSF Due	RSF	Gross Ann. Total
9/1/2021	2/3/2022	1st	\$38.83	6,227	\$42,286.42
2/4/2022	2/3/2023	2nd	\$39.94	6,227	\$248,706.38
2/4/2023	2/3/2024	3rd	\$41.09	6,227	\$255,867.43
2/4/2024	2/28/2025	4th	\$42.27	6,227	\$285,149.90
TOTAL					\$832,010.13

The First Year's cost for the 16th floor Additional Leased Premises includes three months of free rent. In addition, staff has estimated the need to expend approximately \$500,000 for fixtures, furniture and equipment, tenant improvements, and other costs related to the occupancy of the Additional Leased Premises.

The estimated cost of the existing 14th floor Leased Premises and the proposed 16th floor Additional Leased Premises is summarized in the following table:

Proposed Amended Lease - Total 16,844 SF, 14th & 16th Floors

Date	End	Year	Total \$RSF Due	RSF	Gross Ann. Total	DPMC Reimb.	Net Ann. Total
2/4/2020	2/3/2021	1st	\$37.75	10,617	\$400,791.75	(\$152,510.00)	\$248,281.75
2/4/2021	8/31/2021	2nd	\$38.83	10,617	\$240,483.90	(\$87,385.20)	\$153,098.70
9/1/2021	2/3/2022	2nd	\$38.83	16,844	\$214,060.63	(\$69,488.00)	\$144,572.63
2/4/2022	2/3/2023	3rd	\$39.94	16,844	\$672,749.36	(\$161,357.60)	\$511,391.76
2/4/2023	2/3/2024	4th	\$41.09	16,844	\$692,119.96	(\$166,003.60)	\$526,116.36
2/4/2024	2/28/2025	5th	\$42.27	16,844	\$771,328.87	(\$185,001.70)	\$586,327.17
TOTAL					\$2,991,534.47	(\$821,746.10)	\$2,169,788.37

The final terms of the first amendment to the Lease will be subject to the approval of the Chief Executive Officer and the Attorney General's Office.

Recommendation

In summary, subject to receiving a tax clearance certificate, I request the Members approve: (1) execution of the first lease amendment with One Gateway Center Office LLC which will increase the leased premises square feet from 10,617 sf to 16,844 sf on two floors for staff reporting to Newark; and (2) expending up to \$500,000 for fixtures, furniture and equipment, tenant improvements, and other costs related to the occupancy of the additional leased premises.



Tim Sullivan
Chief Executive Officer

Prepared by: Juan Burgos and David E. Nuse



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: July 14, 2021

RE: Independent External Compliance Auditor

Summary

The Members are asked to approve the award of the Independent External Compliance Auditor contract to Mercadien, P.C., Certified Public Accountants (Mercadien), of Princeton, New Jersey up to a maximum cost not to exceed \$564,245.00.

Background

Subsection 101(b)(2) of the New Jersey Economic Recovery Act (NJERA), P.L. 2020, c. 156, requires the Authority to conduct periodic, systematic audits of our economic development incentive programs for compliance with applicable laws, regulations, codes, orders, procedures, advisory opinions and rulings. As defined in the NJERA, "economic development incentive" means "a financial incentive, awarded by the authority to a person or entity, or agreed to between the authority and a person or entity, for the purpose of stimulating economic development or redevelopment in New Jersey, including, but not limited to, a bond, grant, loan, loan guarantee, matching fund, tax credit, or other tax expenditure." Staff recommend engaging an independent, external compliance auditor to comply with this requirement.

On Monday, May 10, 2021, Internal Process Management (IPM) issued a Request for Competitive Engagement Pricing, from New Jersey State Contract #T-2458 – "Auditing Services: Financial Auditing." NJEDA procurement 2021-RFQ-121 sought to solicit submissions to engage a well-qualified firm for independent compliance audit services. Pursuant to the State Contract, specifically its permissible term / period of time, the solicitation provided for the award of one (1) one (1) year contract, with the possibility of a one (1) one (1) year extension option to be exercised at the sole discretion of the Authority. The RFQ was issued pursuant to the terms of New Jersey State Contract #T-2458 and the Method of Operation (MOO) for that contract. Therefore, staff issued the Scope of Work and Request for Engagement Pricing to eleven (11) of the twelve (12) Vendors in the approved pool; only PKF O'Connor Davies (PKF) was omitted due to the fact that PKF is the NJEDA's Independent Auditor pursuant to Executive Order 122 and would present a conflict of interest and/or appearance thereof.

In response to the Request for Competitive Engagement Pricing, IPM received one (1) proposal from Mercadien, which was reviewed and evaluated to ensure all of the qualifications, experience, and other requirements as outlined in the RFQ were met. Staff determined that Mercadien's submission demonstrated its qualifications and its ability to perform the work.

Staff also reviewed Mercadien's Engagement Pricing. The Mercadien submission anticipates an estimated 151.25 hours for each program audited for compliance amounting to \$25,647.50 each. Staff concluded that the Engagement Pricing was reasonable given the work to be performed and the proposed deliverables. It was further determined that Mercadien's submission, including its Engagement Pricing, is the most advantageous to the NJEDA, price and other factors considered.

As Mercadien was the only bidder, and staff reviewed and evaluated Mercadien's submission and determined that it was the most advantageous to the NJEDA, it is recommended that the Authority award the contract to Mercadien. As a result, it is recommended that the Authority retain Mercadien to provide independent external compliance audits for a one (1) year term, and if exercised by the Authority, one (1) one (1) year renewal option.

Staff anticipates the compliance auditor completing eleven (11) audits per year. The Authority currently has nearly forty (40) programs that have not been audited recently and that would be subject to the compliance audit requirement. Staff anticipates implementing fifteen (15) new NJERA programs over the next year. Based upon a five-year audit cycle, the Authority will conduct approximately eleven (11) compliance audits per year. Based upon Mercadien's Engagement Pricing and assuming eleven (11) compliance audits will be conducted each year, the total cost for the first year will be \$282,122.50; the total cost for the possible second year will be \$282,122.50; for a total potential aggregate of \$564,245.00.

Recommendation

The Members are asked to approve the award of the Independent External Compliance Auditor contract to Mercadien, P.C., Certified Public Accountants, of Princeton, New Jersey up to a maximum cost not to exceed \$564,245.00.



Tim Sullivan
Chief Executive Officer

Prepared by: C. Baker / T. Fanikos



MEMORANDUM

Outside Special Legal Counsel

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: July 14, 2021

RE: Special Counsel: Executive Order 52 (Murphy 2019), Attorney General Investigation, Holtec and Cooper Legal Actions – Amendment to Retention Agreement

Summary

The Members are asked to approve additional contract funding of \$920,000 (for a revised fee cap of \$4,320,000) due to ongoing need for representation related to the subject legal matters. The additional funding will be at the blended hourly rate for all attorney positions of \$450/hour outlined in the original retention letter executed between the Authority and Friedman, Kaplan, Seiler, and Adelman, LLP (“Friedman Kaplan”) on February 21, 2019.

Background

On January 24, 2019, Governor Murphy signed Executive Order 52 which established a Task Force on EDA’s Tax Incentives (the “Task Force”). The mission of the Task Force was to conduct an in-depth examination of the deficiencies in the design, implementation, and oversight of Grow NJ and ERG, including those identified in the 2019 State Comptroller’s performance audit, to inform consideration regarding the planning, development and execution of the future iterations of these or similar tax incentive programs. The Task Force held public hearings and asked individuals to testify who could provide insight into the design, implementation, and oversight of these programs. The Task Force reported its findings to the Governor and the Legislature.

During the same timeframe, the Attorney General announced a separate investigation of these programs.

Based on the foregoing, EDA staff, in consultation with an ad hoc committee of Board members, determined it was in the best interest of the Authority to retain special counsel for the Board and the staff.

On January 31, 2019, the Authority issued a Solicitation of Proposals (“Solicitation”) for Emergent, Specialized Legal Services. The purpose of the Solicitation was to obtain proposals from certain well-qualified, non-conflicted law firms that were identified by a committee of the Board to represent both the EDA Board and staff. The Solicitation resulted in an award of a one (1) year contract with three (3), one (1) year extension options at an initial retention of \$250,000 approved under delegated authority to Friedman Kaplan. This amount was increased by:

- \$400,000 with board approval on May 14, 2019, revising the fee cap to \$650,000
- \$400,000 with board approval on June 11, 2019, revising the fee cap to \$1,050,000
- \$850,000 with board approval on August 13, 2019, revising the fee cap to \$1,900,000
- \$500,000 with board approval on February 20, 2020, revising the fee cap to \$2,400,000
- \$1,000,000 with board approval on December 20, 2020, revising the fee cap to \$3,400,000

Work began in February of 2019 and is ongoing. Friedman Kaplan has provided continual advice and counsel with respect to matters bearing upon the investigations. Services include assistance, counseling, and guidance to the EDA Board and staff, as applicable, with respect to the production of documents, subpoenas, public hearing testimony, overall strategy, regulatory and fiduciary obligations, and potential litigation. To date, two legal claims have been filed against the Authority – one from Holtec International (“Holtec”) and one from Cooper University Hospital (“Cooper”). Both companies are Grow NJ applicants. The Holtec claim is an active litigation matter for which Friedman Kaplan is providing continuing representation to EDA. For the Cooper matter, Friedman Kaplan has been in regular contact with Cooper on the status of their Grow NJ tax credits.

When legal action is taken against the Authority related to the investigations, Friedman Kaplan has been requested to prepare, commence, and manage litigation on behalf of the Authority. Preparation may include significant pre-filing evaluative and investigative work. Litigation will include drafting pleadings, motions, briefs and all other papers to be filed in court; conducting and responding to discovery; attending all pre-trial, trial and post-trial court appearances; conducting settlement negotiations and handling appeals. Special Counsel will also be expected to handle all issues arising in the litigation, including all issues that must be raised in compliance with the entire controversy doctrine. Special Counsel must regularly communicate with EDA Board Members and staff, as applicable.

Through April 30, 2021, the Authority has paid approximately \$3,279,000 under the retention agreement.

To date, \$500,000 has been reimbursed through the Authority’s insurance coverage. This was the result of an initial approval for \$750,000, net of a policy deductible of \$250,000. Additional reimbursements are expected as costs are submitted, reviewed, and approved by the carrier.

Recommendation

In summary, approval is requested for ongoing additional contract funding of \$920,000 (for a revised fee cap of \$4,320,000) at the same blended hourly rate for all attorney positions of \$450/hour under the same terms and conditions outlined in the original retention letter of February 21, 2019. It should be noted that these fees are being paid from the Authority’s net assets and will not detract from existing EDA programs or burden the taxpayers of the state. Additionally, some of the costs are expected to continue to be reimbursed through the Authority’s insurance coverage.



Tim Sullivan
Chief Executive Officer

Prepared by: Fred Cole



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: July 14, 2021

RE: EPA Brownfield Assessment Cooperative Agreement

Summary

The Members are requested to authorize the Chief Executive Officer to execute a cooperative agreement for a \$300,000 Brownfield Assessment Grant with the US Environmental Protection Agency (EPA), provided that the agreement is in substantially the same form as the attached Brownfield RLF agreement except for allowable purposes. The New Jersey Economic Development Authority (NJEDA) submitted a brownfield assessment grant application to EPA for EPA Fiscal Year 2021. This is very competitive program, and EPA has notified NJEDA that NJEDA has been selected to receive a \$300,000 award, subject to entering into a cooperative agreement with EPA. The performance period for this grant is three years and is expected to begin October 1, 2021. There is no cost share requirement for this grant.

Background

The goal of the EPA's Brownfield Assessment grant program is to provide funding to a grant recipient to perform environmental assessment and investigation activities and, to a more limited extent, for the grant recipient to develop brownfield inventories, prioritize sites, support community involvement, conduct planning, and develop site reuse plans. This program catalyzes the transformation of underutilized properties into community assets.

Historically, a major barrier to successful brownfield redevelopment projects in New Jersey has been the lack of funding available to support site assessment, planning, and cleanup. As described in our Brownfield Assessment grant application, the NJEDA intends to use these funds to conduct assessment activities at brownfield sites, specifically targeting sites in the state's 12 Community Collaborative Initiative (CCI) cities which is a place-based partnership lead by NJDEP that promotes quality of life in New Jersey's distressed communities. Those twelve CCI communities are:

Bayonne
Bridgeton
Camden
Jersey City

Millville
Newark
Trenton
Paterson

Paulsboro
Perth Amboy
Salem City
Vineland

NJEDA would work in close collaboration with the New Jersey Department of Environmental Protection's (NJDEP's) Office of Brownfield and Community Revitalization to implement the program.

While some NJEDA resources are available to support brownfield redevelopment, the need is so great that priority brownfield redevelopment projects in CCI and other communities remain underfunded. This grant award from USEPA provides needed assessment funds, which can be layered with NJEDA's various other funding tools to advance brownfield redevelopment projects. This grant will help direct brownfield assessment funding to CCI and other communities so that they can advance brownfield remediation and redevelopment efforts.

If approved, this grant will complement NJEDA's larger efforts, under the leadership of Governor Murphy, to promote equitable solutions for environmental and economic well-being. Specifically, this program complements the NJEDA's new Brownfield Loan Program, as well as the Brownfield Impact Fund, which is supported by the USEPA Brownfield Revolving Loan Fund (RLF), the forthcoming brownfield redevelopment tax incentive program, and the Hazardous Discharge Site Remediation Fund (HDSRF).

The USEPA is currently drafting the cooperative agreement, and it is not yet available for review. It is anticipated that USEPA will not provide much time for response once the agreement is made available, so staff is requesting for delegated authority for the CEO to sign a cooperative agreement for the \$300,000 Brownfield Assessment Grant, provided that it is in substantially the same form as the one attached for the FY2020 USEPA Brownfield RLF grant cooperative agreement except for allowable purposes. The eligible uses of the Brownfield Assessment Grant would be for eligible programmatic expenses to inventory, characterize, assess, and conduct planning and outreach for brownfield sites. Cleanup activities would not be an eligible use of Brownfield Assessment Grant funds.

Fund Utilization Plan:

The funds will be used to conduct environmental assessment and investigation activities (and, to a more limited extent, for the grant recipient to develop brownfield inventories, prioritize sites, conduct community involvement activities, conduct planning, and develop site reuse plans) at brownfield sites located in CCI and other communities, pursuant to the terms of the USEPA Cooperative Agreement, assisting with the catalyzing the redevelopment of underutilized properties into community assets.

Recommendation

The Members' approval is requested to authorize the Chief Executive Officer to execute a cooperative agreement with the USEPA for the Brownfields Assessment Grant, and to execute any other documents necessary to effectuate the grant, provided the agreement is in substantially the same form as the attached Brownfield RLF agreement except for allowable purposes. The grant is in the amount of \$300,000. Because there is no cost share requirement, NJEDA will not need to contribute any funding toward implementation of this grant program.

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

Tim Sullivan, CEO

Prepared by: Elizabeth Limbrick

Attachment: Exhibit A: NJEDA and USEPA Brownfield Cooperative Agreement

	U.S. ENVIRONMENTAL PROTECTION AGENCY Cooperative Agreement	GRANT NUMBER (FAIN): 96249601 MODIFICATION NUMBER: 0 PROGRAM CODE: BF		DATE OF AWARD 09/25/2020
		TYPE OF ACTION New		MAILING DATE 10/02/2020
		PAYMENT METHOD: Advance		ACH# 20208
		RECIPIENT TYPE: State		
RECIPIENT: New Jersey Economic Development Authority 36 West State Street Trenton, NJ 08625 EIN: 22-2045817		PAYEE: New Jersey Economic Development Authority 36 West State Street Trenton, NJ 08625		
PROJECT MANAGER Christian Gaetano 36 West State Street Trenton, NJ 08625 E-Mail: cgaetano@njeda.com Phone: 609-858-6085		EPA PROJECT OFFICER Alison Devine 290 Broadway, LCRD/LRPB New York, NY 10007-1866 E-Mail: Devine.Alison@epa.gov Phone: 212-637-4158		EPA GRANT SPECIALIST Maria Flores Grants and Audit Management Branch, MSD/GAMB E-Mail: flores.maria@epa.gov Phone: 212-637-3407
PROJECT TITLE AND DESCRIPTION NJ EDA FY20 EPA Revolving Loan Fund Grant Application This agreement will provide funding for the New Jersey Economic Development Authority (NJEDA) to capitalize a revolving loan fund from which to make loans and subaward to clean up brownfields sites, and conduct other necessary activities to prudently manage the RLF. NJEDA's RLF program will target the 12 Community Collaborative Initiative (CCI) communities which have high instances of brownfields, poverty, health disparities and need for revitalization. Brownfields are real property, the expansion, development or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.				
BUDGET PERIOD 10/01/2020 - 09/30/2025		PROJECT PERIOD 10/01/2020 - 09/30/2025		TOTAL BUDGET PERIOD COST \$960,000.00
				TOTAL PROJECT PERIOD COST \$960,000.00
NOTICE OF AWARD				
Based on your Application dated 12/03/2019 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$800,000. EPA agrees to cost-share 83.33% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$800,000. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.				
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)			AWARD APPROVAL OFFICE	
ORGANIZATION / ADDRESS Grants and Audit Management Branch 290 Broadway, 27th Floor New York, NY 10007-1866			ORGANIZATION / ADDRESS U.S. EPA, Region 2 Land, Chemicals and Redevelopment Division 290 Broadway New York, New York 10007-1866	
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY				
Digital signature applied by EPA Award Official Donald Pace - Director				DATE 09/25/2020

EPA Funding Information

BF - 96249601 - 0 Page 2

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 800,000	\$ 800,000
EPA In-Kind Amount	\$	\$	\$ 0
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$ 160,000	\$ 160,000
State Contribution	\$	\$	\$ 0
Local Contribution	\$	\$	\$ 0
Other Contribution	\$	\$	\$ 0
Allowable Project Cost	\$ 0	\$ 960,000	\$ 960,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.818 - Brownfields Multipurpose Assessment Revolving Loan Fund and Cleanup Cooperative Agreements	CERCLA: Sec. 104(k)(3) Consolidated Appropriations Act of 2018 (P.L. 115-141)	2 CFR 200 2 CFR 1500 and 40 CFR 33

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	2002HE0307	20	E4	02X0AG7	000D79	4114	-	-	800,000
									800,000

Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$56,791
2. Fringe Benefits	\$19,519
3. Travel	\$6,000
4. Equipment	\$0
5. Supplies	\$2,690
6. Contractual	\$75,000
7. Construction	\$0
8. Other	\$800,000
9. Total Direct Charges	\$960,000
10. Indirect Costs: % Base	\$0
11. Total (Share: Recipient <u>16.67</u> % Federal <u>83.33</u> %.)	\$960,000
12. Total Approved Assistance Amount	\$800,000
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$800,000
15. Total EPA Amount Awarded To Date	\$800,000

Administrative Conditions

GENERAL TERMS AND CONDITIONS

The recipient agrees to comply with the current EPA general terms and conditions available at: <https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-october-1-2019-or-later>. These terms and conditions are in addition to the assurances and certifications made as a part of the award and the terms, conditions, or restrictions cited throughout the award.

The EPA repository for the general terms and conditions by year can be found at: <https://www.epa.gov/grants/grant-terms-and-conditions>.

GRANT-SPECIFIC ADMINISTRATIVE CONDITIONS

A. UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES

GENERAL COMPLIANCE, 40 CFR, Part 33

The recipient agrees to comply with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities under assistance agreements, contained in 40 CFR, Part 33 except as described below based upon the associated class deviation.

EPA MBE/WBE CERTIFICATION, 40 CFR, Part 33, Subpart B

A class exception to the following provisions of Subpart B of 40 CFR Part 33 has been issued suspending the EPA MBE/WBE certification program: §33.204(a)(3) providing that an entity may apply to EPA MBE or WBE certification after unsuccessfully attempting to obtain certification as otherwise described in §33.204; and §33.205 through and including §33.211. The class exception was authorized pursuant to the authority in 2 CFR 1500.3(b).

SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C

Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

- (a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- (b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- (c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

(d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302

The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302 (a)-(d) and (i).

BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)

Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D

A class exception to the entire Subpart D of 40 CFR Part 33 has been authorized pursuant to the authority in 2 CFR 1500.3(b). Notwithstanding Subpart D of 40 CFR Part 33, recipients are not required to negotiate or apply fair share objectives in procurements under assistance agreements.

MBE/WBE REPORTING- SPECIFIC CHANGES PURSUANT TO CLASS DEVIATION, 40 CFR, Part 33, Subpart E

When required, the recipient agrees to complete and submit a “MBE/WBE Utilization Under Federal Grants and Cooperative Agreements” report (EPA Form 5700-52A) on an annual basis. The current EPA Form 5700-52A can be found at the EPA Grantee Forms Page at <https://www.epa.gov/grants/epa-grantee-forms>.

Reporting is required for assistance agreements where funds are budgeted for procuring construction, equipment, services and supplies (including funds budgeted for direct procurement by the recipient or procurement under subawards or loans in the “Other” category) with a cumulative total that exceed the threshold amount of \$250,000, including amendments and/or modifications. When reporting is required, all procurement actions are reportable, not just that portion which exceeds \$250,000.

Annual reports are due by October 30th of each year. Final reports are due by October 30th or 90 days after the end of the project period, whichever comes first. MBE/WBE reports should be sent to the Region 2 Grants Office’s central mailbox (Region2_GrantApplicationBox@epa.gov) with a courtesy copy to the grants specialist.

This provision represents an approved deviation from the MBE/WBE reporting requirements as described in 40 CFR, Part 33, Section 33.502.

B. INTERIM FEDERAL FINANCIAL REPORT AND CLOSE -OUT INSTRUCTIONS

1. Interim Federal Financial Reports (FFRs)

Pursuant to 2 CFR 200.327, EPA recipients shall submit an interim annual Federal Financial Report (SF-425) to EPA no later than 90 calendar days following the anniversary of the start date of the agreement. The FFR must be emailed to rtpfc-grants@epa.gov; the Grants and Audit Management Branch at Region2_GrantApplicationBox@epa.gov; the EPA Grants Specialist and EPA Project Officer. All email attachments must be sent in pdf format. Documents emailed to us in any other format will not be accepted.

EPA may take enforcement actions in accordance with 2 CFR 200.338 if the recipient does not comply with this term and condition.

2. Closeout

The Administrative Closeout Phase for this grant will be initiated with the submission of a "final" FFR, in accordance with 2 CFR 200.343. At that time, the recipient must submit the final FFR by email to rtpfc-grants@epa.gov. A courtesy copy of the final FFR and other forms can be submitted to the Grants and Audit Management Branch via email to Region2_GrantApplicationBox@epa.gov, if applicable below:

- Federally Owned Property Report
- An Inventory of all Property Acquired with federal funds
- Contractor's or Grantee's Invention Disclosure Report (EPA Form 3340-3)

C. EXTENSION OF PROJECT/BUDGET PERIOD EXPIRATION DATE

EPA has not exercised the waiver option to allow automatic one-time extensions for non-research grants under 2 CFR 200.308 (d)(2). Therefore, if a no cost time extension is necessary to extend the period of availability of funds the recipient must submit a written request to the EPA prior to the budget/project period expiration dates. **The written request must include :** a written justification describing the need for additional time, an estimated date of completion, and a revised schedule for project completion including updated milestone target dates for the approved workplan activities. In addition, if there are overdue reports required by the administrative and programmatic terms and conditions of this assistance agreement, the recipient must ensure that they are submitted along with or prior to submitting the no cost time extension request.

The extension request must be submitted to the EPA-Grants and Audit Management Branch via email to Region2_GrantApplicationBox@epa.gov and the EPA Grants Specialist. An interim FFR (SF-425) covering all expenditures and obligations to date, must be emailed to the RTP-Finance Center at rtpfc-grants@epa.gov; the Grants and Audit Management Branch at Region2_GrantApplicationBox@epa.gov; the EPA Grants Specialist and the EPA Project Officer. All email attachments must be sent in pdf format. Documents emailed to us in any other format will not be accepted.

Programmatic Conditions

GRANT-SPECIFIC PROGRAMMATIC TERMS & CONDITIONS

FY20 Revolving Loan Fund (RLF) Cooperative Agreement Terms and Conditions

Please note that these Terms and Conditions (T&Cs) apply to Brownfields RLF capitalization Grants awarded under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k), agreements that transitioned to § 104(k), or agreements which have been amended after 12/24/14. These T&Cs do not apply to pre-FY 2003 agreements subject to CERCLA § 104(d).

I. GENERAL FEDERAL REQUIREMENTS

Note: For the purposes of complying with certain provisions of the Uniform Grant Guidance (UGG), 2 CFR Part 200, loans made by RLF recipients are subawards as that term is defined at 2 CFR § 200.92. The term subaward also encompasses “grants” made by the RLF recipient under CERCLA § 104(k)(3)(B)(ii). The UGG requirements for subawards in the form of loans and subawards in the form of grants are different. For clarity, these T&Cs refer to “loans” to describe subawards that generate program income from repayments of principal, interest charges and loan processing fees paid by “borrowers”. The T&Cs refer to “subgrants” to describe subawards the RLF recipient provides to an eligible entity or nonprofit organization (“subgrantees”) under terms that do not require repayment.

A. Federal Policy and Guidance

1. Cooperative Agreement Recipients: By awarding this cooperative agreement, the Environmental Protection Agency (EPA) has approved the proposal for the Cooperative Agreement Recipient (CAR).
2. In implementing this agreement, the CAR shall comply with and require that work done by borrowers and subgrantees with cooperative agreement funds comply with the requirements of CERCLA § 104(k). The CAR shall also ensure that cleanup activities supported with cooperative agreement funding comply with all applicable federal and state laws and regulations. The CAR must ensure cleanups are protective of human health and the environment.
3. The CAR must consider whether it is required to have borrowers or subgrantees conduct cleanups through a State or Tribal response program. If the CAR chooses not to require borrowers and subgrantees to participate in a State or Tribal response program, then the CAR is required to consult with the EPA Project Officer on each loan or subgrant to ensure the proposed cleanup is protective of human health and the environment.
4. A term and condition or other legally binding provision shall be included in all agreements entered into with the funds awarded under this agreement, or when funds awarded under this agreement are used in combination with non-federal sources of funds, to ensure that the CAR complies with all applicable federal and state laws and requirements. In addition to CERCLA § 104(k), federal applicable

laws and requirements include 2 CFR Part 200.

5. The CAR must comply with federal cross-cutting requirements. These requirements include, but are not limited to, DBE requirements found at 40 CFR Part 33; OSHA Worker Health & Safety Standard 29 CFR § 1910.120; Uniform Relocation Act (40 USC § 61); National Historic Preservation Act (16 USC § 470); Endangered Species Act (P.L. 93-205); Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR § 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC §§ 327-333); the Anti-Kickback Act (40 USC § 276c); and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.
6. The CAR must comply with Davis-Bacon Act prevailing wage requirements and associated U.S. Department of Labor (DOL) regulations for all construction, alteration, and repair contracts and subcontracts awarded with funds provided under this agreement by operation of CERCLA § 104(g). For more detailed information on complying with Davis-Bacon please see the Davis-Bacon Addendum to these terms and conditions.

II. SITE/BORROWER/SUBGRANTEE ELIGIBILITY REQUIREMENTS

A. Brownfield Site Eligibility

1. The CAR must provide information to the EPA Project Officer about site-specific work prior to incurring any costs under this cooperative agreement for sites that have not already been pre-approved in the CAR's workplan by EPA. The information that must be provided includes whether the site meets the definition of a brownfield site as defined in § 101(39) of CERCLA and whether the CAR is the potentially responsible party under CERCLA § 107 is exempt from CERCLA liability or has defenses to CERCLA liability.
2. If the site is excluded from the general definition of a brownfield site but is eligible for a property-specific funding determination, then the CAR may request a property-specific funding determination from the EPA Project Officer. In its request, the CAR must provide information sufficient for EPA to make a property-specific funding determination on how financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. The CAR must not incur costs for cleaning up sites requiring a property-specific funding determination by EPA until the EPA Project Officer has advised the CAR that EPA has determined that the property is eligible.
3. Brownfield Sites Contaminated with Petroleum

- a. For any petroleum-contaminated brownfield site that is not included in the CAR's EPA-approved workplan, the CAR shall provide sufficient documentation to EPA prior to incurring costs under this cooperative agreement which documents that:
 - i. the State determines there is "no viable responsible party" for the site;
 - ii. the State determines that the person assessing, investigating, or cleaning up the site is a person who is not potentially liable for cleaning up the site; and
 - iii. the site is not subject to any order issued under Section 9003(h) of the Solid Waste Disposal Act.

This documentation must be prepared by the CAR or the State, following contact and discussion with the appropriate state petroleum program official. Please contact the EPA Project Officer for additional information.

- b. Documentation must include:
 - i. the identity of the State program official contacted;
 - ii. the State official's telephone number;
 - iii. the date of the contact; and
 - iv. a summary of the discussion relating to the State's determination that there is no viable responsible party and that the person assessing, investigating, or cleaning up the site is not potentially liable for cleaning up the site.

Other documentation provided by a State to the recipient relevant to any of the determinations by the State must also be provided to the EPA Project Officer.

- c. If the State chooses not to make the determinations described in Section II.A.3. above, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the requisite determinations.
- d. EPA will make all determinations on the eligibility of petroleum-contaminated brownfield sites located on tribal lands (i.e., reservation lands or lands otherwise in Indian country, as defined at 18 U.S.C. § 1151). Before incurring costs for these sites, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the determinations described in Section II.A.3.b. above.

B. Borrower and Subgrantee Eligibility

1. The CAR may only provide cleanup subgrants to an eligible entity or nonprofit organization to clean up sites owned by the eligible entity or nonprofit organization at the time of the award of the subgrant. Eligible subgrantee include eligible entities as defined under CERCLA § 104(k)(1), which includes nonprofit organizations exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, and other nonprofit organizations as defined

at 2 CFR § 200.70. Nonprofit institutions of higher education as defined at 2 CFR § 200.55 are also eligible for cleanup subgrants. Nonprofit organizations described in Section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act of 1995 are not eligible for subgrants.

2. The CAR may provide loans to an eligible entity, a site owner, a site developer, or another person without regard to whether the borrower is a for-profit organization. Borrowers do not have to own the property throughout the term of the loan unless ownership is required for the purpose of securing collateral or the CAR otherwise determines that borrower site ownership is necessary.
3. The subgrantee must retain ownership of the site throughout the period of performance of the subgrant and must consult with the EPA Project Officer prior to transferring title or otherwise conveying the real property comprising the site. For the purposes of this agreement, the term “owns” means fee simple title unless EPA Project Officer approves a different ownership arrangement.
4. The CAR shall not provide a subgrant to itself or another component of its own unit of government or organization.
5. The CAR may discount loans, also referred to as the practice of forgiving a portion of loan principal. For an individual loan, the amount of principal discounted may be any percentage of the total loan amount up to 30%, provided that the total amount of the principal forgiven for that loan shall not exceed \$200,000. Eligible entities and nonprofit organizations described in Section II.B.1. are eligible for discounted loans. **Private, for-profit entities are not eligible for discounted loans.** In addition to these terms, a discounted loan shall not be used in combination with a subgrant at the same site.
6. The CAR shall not loan or subgrant funds that will be used to pay for cleanup activities at a site for which a borrower or subgrantee is potentially liable under CERCLA § 107. The CAR may rely on its own investigation which can include an opinion from the borrower’s or subgrantee’s counsel. However, the CAR must advise the borrower or subgrantee that the investigation and/or opinion of its subgrantee counsel is not binding on the Federal Government.
7. For approved eligible petroleum-contaminated brownfield sites, the borrower or subgrantee cleaning up the site must not be potentially liable for cleaning up the site. For brownfield grant purposes, an entity generally will not be considered potentially liable for petroleum contamination if it has not dispensed or disposed of petroleum or petroleum-product at the site, has not exacerbated the contamination at the site, and taken reasonable steps with regard to the contamination at the site.
8. The CAR shall maintain sufficient documentation supporting and demonstrating the eligibility of the sites, borrowers, and subgrantees.
9. A borrower or subgrantee must submit information regarding its overall environmental

compliance history including any penalties resulting from environmental non-compliance at the site subject to the loan or subgrant. The CAR, in consultation with EPA, must consider this history in its analysis of the borrower or subgrantee as a cleanup and business risk.

10. An entity that is currently suspended, debarred, or otherwise declared ineligible cannot be a borrower or subgrantee.

C. Obligations for CARs, Borrowers, or Subgrantees

1. CARs, borrowers, or subgrantees who are eligible, or seek to become eligible, to receive a loan or subaward must provide information indicating that cooperative agreement funds will not be used to pay for a response cost at a site for which the CAR, borrower, or subgrantee is potentially liable under CERCLA § 107. The CAR, borrower, or subgrantee must demonstrate that it meets the requirements for one of the Landowner Liability Protections as either a Bona Fide Prospective Purchaser (BFPP), Contiguous Property Owner (CPO), or Innocent Landowner (ILO). These requirements include certain threshold criteria and continuing obligations that must be met in order for the CAR, borrower, or subgrantee to maintain its eligible status. If the CAR, borrower, or subgrantee fails to meet these obligations, EPA may disallow the costs incurred under this cooperative agreement for cleaning up the site under CERCLA § 104(k)(8)(C). The Landowner Liability Protection requirements include:

- a. Performing “all appropriate inquiries” into the previous ownership and uses of the property before acquiring the property.
- b. Not being potentially liable or affiliated with any other person who is potentially liable for response costs at the site through: any direct or indirect familial relationship, any contractual, corporate, or financial relationships, or through the result of a reorganized business entity that was potentially liable.

While not necessary to obtain ILO protection, the CAR, borrower, or subgrantee must still establish by a preponderance of the evidence that the act or omission that caused the release or threat of release of hazardous substances and any resulting damages were caused by a third party with whom the person does not have an employment, agency, or contractual relationship.

- c. Demonstrate that no disposal of hazardous substances occurred at the facility after acquisition by the landowner (does not specifically apply for the CPO protection).
- d. Taking “reasonable steps” with respect to hazardous substance releases by stopping any continuing releases, preventing any threatened future releases, and preventing or limiting human, environmental, or natural resource exposure to any previously released hazardous substance.

- e. Complying with any land use restrictions established or relied on in connection with the response action at the site and not impeding the effectiveness or integrity of institutional controls employed in connection with the response action.
- f. Providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at the site from which there has been a release or threatened release.
- g. Complying with information requests and administrative subpoenas (does not specifically apply for the ILO protection).
- h. Providing all legally required notices with respect to the discovery or release of any hazardous substances at the site (does not specifically apply for the ILO protection).

Notwithstanding the CAR's, borrower's, and subgrantee's continuing obligations under this agreement, the CAR, borrower, and subgrantee are subject to the applicable liability provisions of CERCLA governing its status as a BFPP, CPO, or ILO. CERCLA requires additional obligations to maintain liability protection. These obligations are found at §§ 101(35), 101(40), 107(b), 107(q) and 107(r).

CARs, borrowers, and subgrantees that are exempt from CERCLA liability or do not have to meet the requirements for asserting an affirmative defense to CERCLA liability must also comply with continuing obligation items c.-h.

III. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

A. Sufficient Progress

1. This condition supplements the requirements of the Sufficient Progress Condition in the General Terms and Conditions. If after 2 years from the date of award, EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, the CAR must implement a corrective action plan concurred on by the EPA Project Officer and approved by the Award Official or Grants Management Officer. Alternatively, EPA may terminate this agreement under 2 CFR § 200.339. for material non-compliance with its terms, or with the consent of the CAR as provided at 2 CFR § 200.339, depending on the circumstances. Sufficient progress is indicated by the CAR having made a loan(s) and/or grant(s), but may also be demonstrated by a combination of all the following: hiring of all key personnel, the establishment and advertisement of the RLF, the development of one or more potential loans/subgrants, or other documented activities that demonstrate to EPA's satisfaction that the CAR will successfully perform the cooperative agreement.

B. Substantial Involvement

1. EPA may be substantially involved in overseeing and monitoring this cooperative agreement.
 - a. Substantial involvement by EPA generally includes administrative activities by the EPA Project Officer such as monitoring, reviewing, and approving of procedures for borrower and subgrantee selection, reviewing of project phases, and approving substantive terms included in professional services contracts. EPA will not direct or recommend that the CAR enter into a loan, subgrant, or contract with a particular entity.
 - b. Substantial EPA involvement includes brownfield property-specific funding determinations described in [Section II.A](#). The CAR may request technical assistance from EPA to determine if sites qualify as brownfield sites and to determine whether the statutory prohibition found in CERCLA § 104(k)(5)(B)(i)(IV) applies. This prohibition does not allow a CAR, borrower, or subgrantee to use cooperative agreement funds to clean up a site if the CAR, borrower, or subgrantee is potentially liable under CERCLA § 107.
 - c. Substantial EPA involvement may include reviewing financial and environmental status reports and monitoring all reporting, record-keeping, and other program requirements.
 - d. Substantial EPA involvement may include the review of the substantive terms of RLF loans and cleanup subgrants.
 - e. EPA may waive any of the provisions in [Section III.B.1](#)., except for property-specific funding determinations, at its own initiative or upon request by the CAR. The EPA Project Officer will provide waivers in writing.
2. Effects of EPA's substantial involvement include:
 - a. EPA's review of any project phase, document, or cost incurred under this cooperative agreement will not have any effect upon CERCLA § 128 *Eligible Response Site* determinations or rights, authorities, and actions under CERCLA or any federal statute.
 - b. The CAR remains responsible for ensuring that all cleanups are protective of human health and the environment and comply with all applicable federal and state laws. If changes to the expected cleanup become necessary based on public comment or other reasons, the CAR must consult with the EPA Project Officer and the State.
 - c. The CAR remains responsible for ensuring costs are allowable under 2 CFR Part 200, Subpart E.

C. Cooperative Agreement Recipient Roles and Responsibilities

1. The CAR is responsible for establishing an RLF team that will implement the program and assign a Program Manager for coordinating the team's activities as outlined below.
2. The CAR must acquire the services of a Qualified Environmental Professional(s) as defined in 40 CFR § 312.10 to coordinate, direct, and oversee the brownfield site cleanup activities at a given site, if it does not have such a professional on staff.
3. The CAR shall act as or appoint a qualified "fund manager" to carry out responsibilities that relate to financial management of the loan and/or subgrant program. However, the CAR remains accountable to EPA for the proper expenditure of cooperative agreement funds. Any funding arrangements between the CAR and the fund manager must be consistent with 2 CFR Parts 200 and 1500 and [EPA's Subaward Policy](#). Additional information is available in EPA's [Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements](#).
4. The CAR shall appoint appropriate legal counsel if counsel is not already available. Counsel must review all loan/subgrant agreements prior to execution unless the EPA Project Officer waives this requirement.
5. The CAR is responsible for ensuring that borrowers and subgrantees comply with the terms of their agreements with the CAR, and that agreements between the CAR and borrowers and subgrantees are consistent with the terms and conditions of this agreement.
6. When the CAR makes loans and subgrants under this agreement, they become a pass-through entity for the purposes of the subrecipient oversight and management requirements of [2 CFR §§ 200.330 through 200.332](#). Requirements for oversight and management of subgrantees are supplemented in EPA's National Term and Condition for Subawards which is included in the General Terms and Conditions of this Cooperative Agreement.
7. The following requirements apply when a pass-through entity (CAR) makes loans. These requirements apply to loans and borrowers in lieu of those specified in EPA's National Term and Condition for Subawards.
 - a. Pass-through entities must establish and follow a system that ensures all loan agreements are in writing and contain all of the elements required by [2 CFR § 200.331\(a\)](#) with the exception of the indirect cost provision of 2 CFR § 200.331(a)(4). EPA has developed an optional template for subaward agreements that is available in [Appendix D of EPA's Subaward Policy](#) which may also be used for loan agreements.
 - b. Borrowers must comply with the internal control requirements specified at [2 CFR § 200.303](#) and are subject to the 2 CFR Part 200, Subpart F, *Audit Requirements*. The pass-through entity (CAR) must include a condition in all loans that requires borrowers to comply with this requirement. No other provisions of the Uniform Grant Guidance, including the Procurement Standards, apply directly to borrowers.

- c. Prior to making loans or subgrants, the pass-through entity (CAR) must ensure that each borrower or subgrantee has a “unique entity identifier.” This identifier is required for registering in the [System for Award Management](#) (SAM) and by [2 CFR Part 25](#) and [2 CFR § 200.331\(a\)\(1\)](#). The unique entity identifier currently is the entity’s Data Universal Numbering System (DUNS) number. Information on obtaining a DUNS number and registering in SAM is available in the General Condition of the pass-through entity’s (CAR’s) agreement with EPA entitled “*Central Contractor Registration/System for Award Management and Universal Identifier Requirements*” T&C of the pass-through entity’s (CAR’s) agreement with EPA.
- d. The pass-through entity (CAR) must ensure that the terms of all loan agreements and subgrants require that borrowers and subgrantees comply with [2 CFR Part 170, Reporting Subaward and Executive Compensation](#) under Federal Funding Accountability and Transparency Act (FFATA) set forth in the General Condition of the pass-through entity’s (CAR’s) agreement with EPA entitled “*Reporting Subawards and Executive Compensation*.”
- e. In addition to other prudent lending practices described, in [Section VI](#), pass-through entities (CARs) must establish and follow a system for evaluating borrowers risks of noncompliance with federal statutes, regulations, and the terms and conditions of the loan agreement as required by [2 CFR § 200.331\(b\)](#) and document the evaluation. Risk factors may include:
 - i. Prior experience with same or similar loans;
 - ii. Results of previous audits;
 - iii. Whether the borrower has new or substantially changed personnel or systems; and
 - iv. Extent and results, if any, of federal awarding agency or the pass-through entity’s monitoring of the borrower.
- f. Pass-through entities (CARs) must establish and follow a process for deciding whether to impose additional requirements on borrowers based on risk factors as required by [2 CFR § 200.331\(c\)](#). Examples of additional requirements authorized by [2 CFR § 200.207](#) include:
 - i. Only disbursing funds to the borrower under the “actual expense” method after obtaining detailed cost accounting records;
 - ii. Withholding authority to proceed to the next phase of the loan funded project until receipt of evidence of acceptable performance within a given period of performance;
 - iii. Requiring additional, more detailed financial reports;

- iv. Requiring additional project monitoring;
- v. Requiring the borrower to obtain technical or management assistance;
and
- vi. Establishing additional prior approvals.
- vii. Pass-through entities (CARs) must establish and follow a system for monitoring borrower performance that includes the elements required by [2 CFR § 200.331\(d\)](#) and report the results of the monitoring in performance reports as provided in the reporting terms and conditions of this agreement.
- viii. Pass-through entities (CARs) must establish and follow written procedures under [2 CFR § 200.302\(b\)\(7\)](#) for determining that loan costs are allowable in accordance with [2 CFR Part 200, Subpart E](#) and the terms and conditions of this award. These procedures may provide for allowability determinations on a pre-award basis, through ongoing monitoring of costs that borrowers incur, or a combination of both approaches provided the pass-through entity (CAR) documents its determinations.
- g. Pass-through entities (CARs) must establish and maintain a system under [2 CFR § 200.331\(d\)\(3\)](#) and [2 CFR § 200.521\(e\)](#) for issuing management decisions for Federal or Single Audits of loans that make findings relating to this award. However, the CAR remains accountable to EPA for ensuring that unallowable loan costs initially paid by EPA are reimbursed or mitigated through offset with allowable costs whether the recipient recovers those costs from the borrower or not.

By accepting this award, the CAR is certifying that it either has systems in place to comply with the requirements described in items in [Section III.C.](#) or will refrain from making loans until the systems are designed and implemented.

8. As the pass-through entity, the CAR must report to EPA on its borrower and subgrantee monitoring activities under [2 CFR § 200.331\(d\)](#), including the following information as part of the CAR's quarterly performance reporting:
 - a. Summaries of results of reviews of financial and programmatic reports;
 - b. Summaries of findings from site visits and/or desk reviews to ensure effective borrower or subgrantee performance;
 - c. Environmental results the borrower or subgrantee achieved;
 - d. Summaries of audit findings and related pass-through entity management decisions, if any; and
 - e. Actions the pass-through entity has taken to correct any deficiencies such as those specified at [2 CFR § 200.331\(e\)](#), [2 CFR § 200.207](#) and the [2 CFR § 200.338, Remedies for Noncompliance](#) .
9. Cybersecurity – The recipient agrees that when collecting and managing environmental data

under this cooperative agreement, it will protect the data by following all applicable State law cybersecurity requirements.

- a. EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement are secure. For purposes of this section, a connection is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition.

If the recipient's connections as defined above do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the recipient agrees to contact the EPA Project Officer (PO) and work with the designated Regional/ Headquarters Information Security Officer to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the recipient into systems operated and used by EPA's regulatory programs for the submission of reporting and/or compliance data.

- b. The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in Cybersecurity Section a. above if the subrecipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange. The recipient will be in compliance with this condition: by including this requirement in subaward agreements; and during subrecipient monitoring deemed necessary by the recipient under 2 CFR § 200.331(d), by inquiring whether the subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and EPA.

10. All geospatial data created must be consistent with Federal Geographic Data Committee (FGDC) endorsed standards. Information on these standards may be found at www.fgdc.gov.

D. Quarterly Progress Reports

1. In accordance with EPA regulations 2 CFR Parts 200 and 1500 (specifically, § 200.328, *Monitoring and Reporting Program Performance*), the CAR agrees to submit quarterly progress reports to the EPA Project Officer within 30 days after each reporting period. The reporting periods are October 1 – December 31 (1st quarter); January 1 – March 31 (2nd quarter); April 1 – June 30 (3rd quarter); and July 1 – September 30 (4th quarter).

These reports shall cover work status, work progress, difficulties encountered, preliminary data results and a statement of activity anticipated during the subsequent reporting period, including a description of equipment, techniques, and materials to be used or evaluated. A discussion of expenditures and financial status for each workplan task, along with a

comparison of the percentage of the project completed to the project schedule and an explanation of significant discrepancies shall be included in the report. The report shall also include any changes of key personnel concerned with the project.

The CAR shall refer to and utilize the Quarterly Reporting function within the Assessment, Cleanup and Redevelopment Exchange System (ACRES) to submit quarterly reports.

2. The CAR must submit progress reports on a quarterly basis to the EPA Project Officer. Quarterly progress reports must include:
 - a. A summary that clearly differentiates between activities completed with EPA funds provided under the Brownfield RLF cooperative agreement, including the required cost share, and related activities completed with other sources of leveraged funding.
 - b. A summary and status of approved activities performed during the reporting quarter; a summary of the performance outputs/outcomes achieved during the reporting quarter; and a description of problems encountered during the reporting quarter that may affect the project schedule.
 - c. An update on project schedules and milestones, including an explanation of any discrepancies from the EPA-approved workplan.
 - d. A list of the loans and/or subgrants during the reporting quarter.
 - e. A budget summary table with the following information: current approved project budget; EPA funds drawn down during the reporting quarter; costs drawn down to date (cumulative expenditures); cost share contributions; program income generated and used; and total remaining funds. The CAR should include an explanation of any discrepancies in the budget from the EPA-approved workplan, of cost overruns or high unit costs, and other pertinent information.

Note: Each property where cleanup activities were performed and/or completed must have its corresponding information updated in ACRES (or via the Property Profile Form with prior approval from the EPA Project Officer) prior to submitting the quarterly progress report (see [Section III.E.](#) below).

3. For the loans executed by the CAR under this agreement, the CAR must also report on the following items as part of the CAR's quarterly performance reporting:
 - a. Summaries of results of reviews of financial and programmatic reports.
 - b. Environmental results achieved by the borrower.
4. The CAR must maintain records that will enable it to report to EPA on the amount of funds (direct EPA funding and program income) disbursed by the CAR to clean up specific properties under this cooperative agreement.
5. In accordance with 2 CFR § 200.328(d)(1) the CAR agrees to inform EPA as soon as problems, delays, or adverse conditions become known which will materially impair the

ability to meet the outputs/outcomes specified in the EPA-approved workplan.

E. Property Profile Submission

1. The CAR must report on interim progress (i.e., loan signed, clean up started) and any final accomplishments (i.e., clean up completed, contaminants removed, institutional controls, engineering controls) by completing and submitting relevant portions of the Property Profile Form using the Assessment, Cleanup and Redevelopment Exchange System (ACRES). The CAR must enter the data in ACRES as soon as the interim action or final accomplishment has occurred, or within 30 days after the end of each reporting quarter. The CAR must enter any new data into ACRES prior to submitting the quarterly progress report to the EPA Project Officer. The CAR must utilize ACRES unless approval is obtained from the EPA Project Officer to utilize the hardcopy version of the Property Profile Form.

F. Final Technical Cooperative Agreement Report with Environmental Results

1. In accordance with EPA regulations 2 CFR Parts 200 and 1500 (specifically, § 200.328 *Monitoring and Reporting Program Performance*), the CAR agrees to submit to the EPA Project Officer within 90 days after the expiration or termination of the approved project period a final technical report on the cooperative agreement and at least one reproducible copy suitable for printing. The final technical report shall document project activities over the entire project period and shall include brief information on each of the following areas:
 - a. a comparison of actual accomplishments with the anticipated outputs/outcomes specified in the EPA-approved workplan;
 - b. reasons why anticipated outputs/outcomes were not met; and
 - c. other pertinent information, including when appropriate, analysis and explanation of cost overruns or high unit costs.

The CAR agrees that it will notify EPA of problems, delays, or adverse conditions which materially impair the ability to meet the outputs/outcomes specified in the EPA-approved workplan.

IV. FINANCIAL ADMINISTRATION REQUIREMENTS

A. Cost Share Requirement

1. CERCLA § 104(k)(10)(B)(iii) requires the recipient of this cooperative agreement to pay a cost share (which may be in the form of a contribution of money, labor, material, or services from a non-federal source unless a Federal statute provides otherwise) of at least 20% (i.e., 20% of the total federal funds awarded, which equates to 16.67% of total project costs as shown in the budget table of this agreement). The cost share contribution must be for costs that are eligible and allowable under the cooperative agreement, be supported by adequate documentation, and otherwise comply with 2 CFR § 200.306. The recipient may use allowable administrative costs borne by the recipient or a third party to meet its cost share

obligation, including indirect costs, subject to the 5% limit on administrative costs described in the Administrative Cost clause in Section IV. Administrative costs, whether paid for by EPA or used as cost share (or a combination of both), shall not exceed the 5% limit.

B. Eligible Uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subgrantees

1. To the extent allowable under the EPA-approved workplan, the CAR may use cooperative agreement funds to capitalize a revolving loan fund to be used for loans or subgrants for cleanup and for eligible programmatic expenses. Eligible programmatic expenses may include activities described in [Section V](#). of these Terms and Conditions. In addition, eligible programmatic expenses may include:
 - a. Determining whether RLF cleanup activities at a particular site are authorized by CERCLA § 104(k).
 - b. Ensuring that an RLF cleanup complies with applicable requirements under federal and state laws, as required by CERCLA § 104(k).
 - c. Limited site characterization to confirm the effectiveness of the proposed cleanup design or the effectiveness of a cleanup once an action has been completed.
 - d. Preparing and updating an Analysis of Brownfield Cleanup Alternatives (ABCA) which will include information about the site and contamination issues, cleanup standards, applicable laws, alternatives considered, and the proposed cleanup.
 - e. Ensuring that public participation requirements are met. This includes preparing a Community Relations Plan which will include reasonable notice, opportunity for public involvement and comment on the proposed cleanup, and response to comments.
 - f. Establishing an Administrative Record for each site.
 - g. Developing a Quality Assurance Project Plan (QAPP) as required by 2 CFR § 1500.11. The specific requirement for a QAPP is outlined in [Implementation of Quality Assurance Requirements for Organizations Receiving EPA Financial Assistance](#) .
 - h. Ensuring the adequacy of each RLF cleanup as it is implemented, including overseeing the borrowers and/or subgrantees activities to ensure compliance with applicable federal and state environmental requirements.
 - i. Ensuring that the site is secure if a borrower or subgrantee is unable or unwilling to complete a brownfield site cleanup.
 - j. Using a portion of a loan or subgrant to purchase environmental insurance for the site. The loan or subgrant shall not be used to purchase insurance intended to provide coverage for any of the ineligible uses under [Section IV](#). , *Ineligible Uses of the Funds for the Cooperative Agreement Recipient*,

Borrower, and/or Subgrantees .

- k. Any other eligible programmatic costs, including costs incurred by the recipient in making and managing a loan or subgrant; obtaining RLF fund manager services; quarterly reporting to EPA including preparation of Property Profiles; awarding, managing and monitoring loans and subgrants as required by the terms of this agreement implementing 2 CFR § 200.331; and carrying out outreach pertaining to the loan and subgrant program to potential borrowers and subgrantees.
 - l. Borrower and subgrantee progress reporting to the CAR is an eligible programmatic cost.
2. The CAR must maintain records that will enable it to report to EPA on the amount of costs incurred by the CAR, borrowers, or subgrantees at brownfield sites.
 3. At least 50% of the funds EPA awards directly to the CAR and the associated cost share must be used by the CAR to provide loans for the cleanup of eligible brownfield sites and associated eligible programmatic costs. The remaining EPA funding and associated cost share may be used for eligible programmatic costs, including issuing and managing subgrants to clean up eligible brownfield sites. (Note: cleanup subgrants are limited to \$350,000 per site. The CAR may request a waiver of the \$350,000 subgrant limit by consulting with the EPA Project Officer for the waiver process.)
 4. To determine whether a cleanup subgrant is appropriate, the CAR must consider the following as required by CERCLA § 104(k)(3)(B)(c):
 - a. The extent to which the subgrant will facilitate the creation of, preservation of, or addition to a park, greenway, undeveloped property, recreational property, or other property used for nonprofit purposes;
 - b. The extent to which the subgrant will meet the needs of a community that has the inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community;
 - c. The extent to which the subgrant will facilitate the use or reuse of existing infrastructure; and
 - d. The benefit of promoting the long-term availability of funds from a revolving loan fund for brownfield remediation.

The CAR must maintain sufficient records to support and document these determinations.

5. If the CAR makes a subgrant to a local government that includes an amount (not to exceed 10% of the subgrant) for Brownfields Program development and implementation, the terms and conditions of that agreement must include a provision that ensures that the local government subgrantee maintains records adequate to ensure compliance with the limits on the amount of subgrant funds that may be expended for this purpose.

6. Under CERCLA § 104(k)(5)(E), CARs and subgrantees may use up to 5% of the amount of federal funding for this cooperative agreement for administrative costs, including indirect costs under 2 CFR § 200.414. The limit on administrative costs for the CAR under this agreement is \$40,000. The total amount of indirect costs and any direct costs for cooperative agreement administration by the CAR paid for by EPA under the cooperative agreement, or used to meet the recipient's cost share, shall not exceed this amount. Subgrantees and borrowers may use up to 5% of the amount of Federal funds in their subawards for administrative costs. As required by 2 CFR § 200.403(d), the CAR and subgrantees must classify administrative costs as direct or indirect consistently and shall not classify the same types of costs in both categories. [Note, borrowers cannot charge indirect costs.]

The term "administrative costs" does not include:

- a. Investigation and identification of the extent of contamination of a brownfield site;
- b. design and performance of a response action; or
- c. monitoring of a natural resource.

Eligible cooperative agreement and subgrant administrative costs subject to the 5% limitation include direct costs for:

- a. Costs incurred to comply with the following provisions of the *Uniform Administrative Requirements for Cost Principles and Audit Requirements for Federal Awards* at 2 CFR Parts 200 and 1500 other than those identified as programmatic.
 - i. Record-keeping associated with equipment purchases required under 2 CFR § 200.313;
 - ii. Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 2 CFR § 200.308;
 - iii. Maintaining and operating financial management systems required under 2 CFR § 200.302;
 - iv. Preparing payment requests and handling payments under 2 CFR § 200.305;
 - v. Financial reporting under 2 CFR § 200.327;
 - vi. Non-federal audits required under 2 CFR Part 200, Subpart F; and
 - vii. Closeout under 2 CFR § 200.343 with the exception of preparing the recipient's final performance report. Costs for preparing this report are programmatic and are not subject to the 5% limitation on direct administrative costs.
- b. Pre-award costs for preparation of the proposal and application for this cooperative agreement (including the final workplan) or applications for subgrants are not allowable as direct costs but may be included in the CAR's or subrecipient's indirect cost pool to the extent authorized by 2 CFR § 200.460.
- c. Borrowers may use up to 5% of the amount of the Federal funds in the loan for loan administration costs. Eligible administrative costs for borrowers include direct costs for:

- i. Salaries, benefits and other compensation for persons who are not directly engaged in the cleanup of the site (e.g., marketing and human resource personnel) but only to the extent to which these persons activities support the cleanup and subsequent re-use of the site;

- ii.

Facility costs such as depreciation, utilities, and rent on the borrower's administrative offices; and

- iii. Supplies and equipment not used directly for cleanup at the site.

- d. Eligible direct costs for loan administration include expenses for:

- i. Preparing revisions and changes in the budget, workplans, and other documents required under the loan agreement;

- ii. Maintaining and operating financial management and personnel systems;

- iii. Preparing payment requests and handling payments; and

- iv. Audits including non-federal audits required under 2 CFR Part 200, Subpart F.

- e. Borrowers shall not use loan funds for indirect costs even if the borrower has an indirect cost rate approved by a cognizant Federal agency.

C. Ineligible Uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subgrantees

- 1. Cooperative agreement funds shall not be used by the CAR, borrower and/or subgrantee for any of the following activities:

- a. Environmental assessment activities, including Phase I and Phase II Environmental Site Assessments;

- b. Monitoring and data collection necessary to apply for, or comply with, environmental permits under other federal and state laws, unless such a permit is required as a component of the cleanup action;

- c. Construction, demolition, and site development activities that are not cleanup actions (e.g., marketing of property, construction of a new facility, or addressing public or private drinking water supplies that have deteriorated through ordinary use);

- d. Job training activities unrelated to performing a specific cleanup at a site covered by a loan or subgrant;

- e. To pay for a penalty or fine;

- f. To pay a federal cost share requirement (e.g., a cost share required by another federal grant) unless there is specific statutory authority;

- g. To pay for a response cost at a brownfield site for which the CAR or recipient of the

subgrant or loan is potentially liable under CERCLA § 107;

- h. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the cleanup; and
 - i. Unallowable costs (e.g., lobbying and purchases of alcoholic beverages) under 2 CFR 200, Subpart E.
2. Cooperative agreement funds shall not be used for any of the following properties:
- a. Facilities listed, or proposed for listing, on the National Priorities List (NPL);
 - b. Facilities subject to unilateral administrative orders, court orders, and administrative orders on consent or judicial consent decree issued to or entered by parties under CERCLA;
 - c. Facilities that are subject to the jurisdiction, custody, or control of the United States government except for land held in trust by the United States government for an Indian tribe; or
 - d. A site excluded from the definition of a brownfield site for which EPA has not made a property-specific funding determination.

D. Use of Program Income – During the Performance Period

- 1. Program income for the RLF shall be defined as the gross income received by the recipient, directly generated by the cooperative agreement award or earned during the period of the award. Program income shall include principal repayments, interest earned on outstanding loan principal, interest earned on accounts holding RLF program income not needed for immediate lending, all loan fees and loan-related charges received from borrowers and other income generated from RLF operations including proceeds from the sale, collection, or liquidations of assets acquired through defaults of loans.
- 2. In accordance with 2 CFR § 200.307 and 2 CFR § 1500.7, during the performance period of the cooperative agreement the CAR is authorized to add program income to the funds awarded by EPA and use the program income under the same terms and conditions of this agreement unless otherwise specified (e.g. [Section IV](#), regarding use of 50% of the funds for loans). CARs that intend to use program income for cost share under 2 CFR § 200.307(e)(3) must obtain prior approval from EPA's Grant Management Officer or Award Official unless the cost share method for using program income was approved at time of award. Note that repayments of principal for loans made all or in part with cooperative agreement funds shall not be used for cost share. These repayments of principal must be returned to the CAR's Brownfields Revolving Loan Fund.
- 3. In accordance with 2 CFR § 1500.7(c), to continue the mission of the Brownfields Revolving Loan Fund, recipients may use cooperative agreement funding prior to using program income funds generated by the revolving loan fund.

4. The CAR that elects to use program income to cover all or part of an RLF's programmatic costs shall maintain adequate accounting records and source documentation to substantiate the amount and percent of program income expended for eligible RLF programmatic costs, and comply with OMB cost principles at 2 CFR Part 200, Subpart E when charging costs against program income. For any cost determined by EPA to have been an ineligible or unallowable use of program income, the recipient shall reimburse the RLF or refund the amount to EPA as directed by EPA's Action Official in its disallowance determination. EPA will notify the recipient of the time period allowed for reimbursement or refund.
5. Loans or subgrants made with a combination of program income and direct funding from EPA are subject to the same terms and conditions as those applicable to this agreement. Loans and subgrants made with direct funding from EPA in combination with non-federal sources of funds are also subject to the same terms and conditions of this agreement.
6. The CAR must obtain EPA approval of the substantive terms of loans and subgrants made entirely with program income unless this requirement is waived by the EPA Project Officer.

E. Interest-Bearing Accounts

1. The CAR must deposit advances of cooperative agreement funds (as described in [Section VII.A., Methods of Disbursement](#)) and program income (as defined earlier) in an interest-bearing account.
2. For interest earned on advances, CARs and subgrantees are subject to the provisions of 2 CFR § 200.305(b)(7)(ii) relating to remitting interest on advances to EPA on a quarterly basis.
3. Interest earned on program income is considered additional program income.

F. Closeout Agreement and Use of Post Cooperative Agreement Program Income

1. As provided at 2 CFR § 200.307(f) and 2 CFR § 1500.7(c) after the end of the award period, the CAR may keep and use program income at the end of the cooperative agreement (retained program income) and use program income earned after the award period (post-closeout program income) in accordance with the following Closeout Agreement unless the CAR and EPA's Award Official or Grants Management Officer agree to modify the terms.
2. Program income shall include principal repayments, interest earned on outstanding loan principal, interest earned on accounts holding RLF program income not needed for immediate lending, all loan fees and loan-related charges received from borrowers and other income generated from RLF operations including proceeds from the sale, collection, or liquidations of assets acquired through defaults of loans.
3. CAR must deposit program income into an interest-bearing account. Interest earned on program income is considered additional program income.

4. CARs shall use program income to continue to operate the revolving loan fund or for some other brownfield purpose as outlined in the terms of this Closeout Agreement.
5. In accordance with 2 CFR § 200.333(e), the CAR shall maintain appropriate records to document compliance with the requirements of the Closeout Agreement (i.e., records relating to the use of accrued and post-award program income) for a three-year period following the end of the Closeout Agreement; unless one of the conditions specified in the regulation applies. EPA may request access to these records to verify that retained and post-closeout program income has been used in accordance with the terms and conditions of this Closeout Agreement.
6. EPA prefers the primary use of retained and post-closeout program income be for providing loans for Brownfields cleanups. In addition to Brownfield cleanup loans, program income may be used to fund the following brownfield activities:
 - a. Cleanup subgrants to eligible entities (other than the CAR itself) and nonprofit organizations for allowable activities as described in the terms of the cooperative agreement;
 - b. Phase I Environmental Site Assessments at brownfield sites performed in accordance with EPA All Appropriate Inquiries Final Rule or ASTM E1527-13 (or the most current version);
 - c. Phase II Environmental Site Assessments and cleanup planning activities at brownfield sites;
 - d. Planning for the assessment, cleanup and re-use of brownfield sites; and
 - e. Programmatic costs to manage and oversee the work being performed.
7. The CAR must ensure that program income is used on a property that is a brownfield site as defined at CERCLA § 101(39) and in accordance with [Section IV.C.](#) , *Ineligible Uses of the funds for the CAR, Borrower, and/or Subgrantees* in the CAR's cooperative agreement with EPA, unless otherwise noted as an eligible use of post-closeout program income in the terms and conditions of this Closeout Agreement.
8. All assessment and cleanup work funded with program income must continue to be performed in accordance with state or tribal environmental rules and regulations and be protective of human health and the environment. If the CAR chooses not to have borrowers or subgrantees conduct assessments or cleanups through State or Tribal response program, then the CAR is required to consult with EPA to ensure the proposed assessment/cleanup is protective of human health and the environment.
9. All brownfield sites that will be using the program income must be located within jurisdiction of the CAR as described in the scope of work for this cooperative agreement.

10. Retained and post-closeout program income shall not be used for site inventory work.
11. When possible, the CAR must continue to perform community involvement activities to solicit input from local communities, these outreach activities may take place with potential environmental justice communities, communities with a health risk related to exposure to hazardous waste or other public health concerns, economically disadvantaged or remote areas, regarding the need for site-specific assessments, loans and subgrants.
12. Program income shall not be used to assess or clean up a site at which the CAR, the borrower, or the subrecipient is potentially liable under CERCLA § 107 unless they qualify for a limitation or defense to liability under CERCLA. The CAR and borrower or subrecipient must make and retain a certification to that effect as part of the records for this Closeout Agreement. If asserting a limitation or defense to liability, the borrower or subrecipient must state the basis for that assertion. When using program income for petroleum-contaminated brownfield sites, the CAR, borrower or subrecipient shall certify that they are not a viable responsible party or potentially liable for the petroleum contamination at the site and retain a certification to that effect as part of the records for this Closeout Agreement. The CAR may consult with EPA for assistance with this matter.
13. The CAR shall submit Annual Reports for the first five (5) years following the effective date of this Closeout Agreement, and thereafter, the CAR shall submit a report once every five years until there is no program income. The effective date of the Closeout Agreement is defined as the day after the cooperative agreement is closed. The annual reports/five-year report(s) shall include the following information:
 - a. A cover page indicating the CAR's organization, cooperative agreement number, annual report number (i.e., 1, 2 or 3), dates for the reporting period, persons/organizations preparing and submitting the report, and the date of the report submission.
 - b. A summary of the activities conducted during the reporting period, a list of reports and documents generated during the reporting period, and a budget summary table reflecting the expenses incurred and program income received.
 - c. Site data consistent with information requested in current Property Profile Forms as required by the [Section III.E., Property Profile Submission](#), of the cooperative agreement or a list of sites created and/or updated in the ACRES database.
14. The CAR must maintain adequate accounting records for how retained and post-closeout program income is managed and spent as well as all other appropriate records and documents related to the activities conducted using retained and post-closeout program income.
15. Termination of this Closeout Agreement occurs when no program income remains to be disbursed and all loans have been repaid, the recipient decides to discontinue carrying out the activities and requests termination of the Closeout Agreement; or EPA determines that the CAR is not effectively deploying the program income.

- a. No remaining program income or future loan repayments. The CAR shall notify EPA's Grants Management Officer in writing when this occurs and certify that all funds have been expended in accordance with the terms and conditions of this Closeout Agreement. The notification must provide a final report regarding the relevant cooperative agreement information in the format specified in item 13. above. EPA has 90 days from receipt of this notification to submit any objections to the termination of this Closeout Agreement. If EPA does not object within that time period, then this Closeout Agreement will terminate with no further action.
 - b. Discontinuance of the Closeout Agreement. The CAR shall notify EPA's Grants Management Officer and Project Officer in writing that it has decided to discontinue performing the Closeout Agreement. The notification must provide a final report with the relevant cooperative agreement information in the format specified in item 13. above. The CAR must account for and return all program income to EPA in accordance with instructions provided by the EPA's Grants Management Officer. CARs must also describe the status and amounts of principal and interest payments that will take place after the Closeout Agreement is terminated. Unless waived by the Grants Management Officer, the CAR must remit to EPA on a quarterly basis program income earned after the Closeout Agreement has been terminated.
 - c. EPA revocation of the Closeout Agreement. If the recipient holds more than \$500,000 in program income three (3) years after the effective date of this Closeout Agreement EPA may assess whether the CAR has effectively carried out the Closeout Agreement. This assessment will take into account the amount of program income the CAR has disbursed within the three-year period, whether the program income being held is retained program income or post-close out program income, and other factors relevant to ensuring that the recipient deploys program income in a timely manner. EPA may revoke the Closeout Agreement and direct the recipient to return the unused program income to EPA based on this assessment.
16. All records and documents relating to performing the Closeout Agreement must be retained for a period of three (3) years following termination or discontinuation of this Closeout Agreement. Records and documents relating solely to performing the cooperative agreement prior to close out may be disposed of in accordance with 2 CFR § 200.333.
 17. EPA's Award Official or Grants Management Officer and the CAR must agree to any modifications to this Closeout Agreement. Agreed-upon modifications must be in writing. Oral or unilateral modifications shall not be effective or binding.
 18. If the CAR expends retained program income in a manner inconsistent with this Closeout Agreement, EPA may take actions authorized under 2 CFR Part 200, *Remedies for Noncompliance*.
 19. If any provisions of this Closeout Agreement are invalidated by a court of law, the parties shall remain bound to comply with the provisions of this Closeout Agreement that have not

been invalidated.

20. No other federal requirements apply to the use of program income under the terms of this Closeout Agreement.

V. RLF REQUIREMENTS

A. Authorized RLF Cleanup Activities

1. The CAR shall prepare an Analysis of Brownfield Cleanup Alternatives (ABCA), or equivalent state Brownfields program document, which will include information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must include effectiveness, ability to implement, and the cost of the response proposed. The evaluation of alternatives must also consider the resilience of the remedial options to address potential adverse impacts caused by extreme weather events (e.g., sea level rise, increased frequency and intensity of flooding, etc.). The alternatives may additionally consider the degree to which they reduce greenhouse gas discharges, reduce energy use or employ alternative energy sources, reduce volume of wastewater generated/disposed, reduce volume of materials taken to landfills, and recycle and re-use materials generated during the cleanup process to the maximum extent practicable. The evaluation will include an analysis of reasonable alternatives including no action. The cleanup method chosen must be based on this analysis.
2. Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling or cleanup), the CAR shall consult with the EPA Project Officer regarding potential applicability of the National Historic Preservation Act (NHPA) (16 USC § 470) and, if applicable, shall assist EPA in complying with any requirements of the NHPA and implementing regulations.

B. Quality Assurance (QA) Requirements

1. If environmental data are to be collected as part of the brownfield cleanup (e.g., cleanup verification sampling, post-cleanup confirmation sampling), the CAR shall comply with 2 CFR § 1500.11 requirements to develop and implement quality assurance practices sufficient to produce data adequate to meet project objectives and to minimize data loss. State law may impose additional QA requirements. Recipients implementing environmental programs within the scope of the assistance agreement must submit to the EPA Project Officer an approvable Quality Assurance Project Plan (QAPP) at least 45 days prior to the initiating of data collection or data compilation. The Quality Assurance Project Plan (QAPP) is the document that provides comprehensive details about the quality assurance, quality control, and technical activities that must be implemented to ensure that project objectives are met. Environmental programs include direct measurements or data generation, environmental modeling, compilation of data from literature or electronic media, and data supporting the design, construction, and operation of environmental technology.

The QAPP should be prepared in accordance with EPA QA/R-5: EPA Requirements for Quality Assurance Project Plans. No environmental data collection or data compilation may occur until the QAPP is approved by the EPA Project Officer and Quality Assurance Regional Manager. Additional information on the requirements can be found at the EPA Office of Grants and Debarment website at <https://www.epa.gov/grants/implementation-quality-assurance-requirements-organizations-receiving-epa-financial>.

2. **Competency of Organizations Generating Environmental Measurement Data:** In accordance with Agency Policy Directive Number FEM-2012-02, *Policy to Assure the Competency of Organizations Generating Environmental Measurement Data under Agency-Funded Assistance Agreements*, the CAR agrees, by entering into this agreement, that it has demonstrated competency prior to award, or alternatively, where a pre-award demonstration of competency is not practicable, the CAR agrees to demonstrate competency prior to carrying out any activities under the award involving the generation or use of environmental data. The CAR shall maintain competency for the duration of the project period of this agreement and this will be documented during the annual reporting process. A copy of the Policy is available online at http://www.epa.gov/fem/lab_comp.htm or a copy may also be requested by contacting the EPA Project Officer for this award.

C. Community Relations and Public Involvement in RLF Cleanup Activities

1. All RLF loan and subgrant cleanup activities require a site-specific Community Relations Plan that includes providing reasonable notice, and the opportunity for public involvement and comment on the proposed cleanup options under consideration for the site.
2. The CAR agrees to clearly reference EPA investments in the project during all phases of community outreach outlined in the EPA-approved workplan which may include the development of any post-project summary or success materials that highlight achievements to which this project contributed.
 - a. If any documents, fact sheets, and/or web materials are developed as part of this cooperative agreement, then they shall include the following statement: **"Though this project has been funded, wholly or in part, by EPA, the contents of this document do not necessarily reflect the views and policies of EPA."**
 - b. If a sign is developed as part of a project funded by this cooperative agreement, then the sign shall include either a statement (e.g., this project has been funded, wholly or in part, by EPA) and/or EPA's logo acknowledging that EPA is a source of funding for the project. The EPA logo may be used on project signage when the sign can be placed in a visible location with direct linkage to site activities. Use of the EPA logo must follow the sign specifications available at <https://www.epa.gov/grants/epa-logo-seal-specifications-signage-produced-epa-assistance-agreement-recipients>.
3. The CAR agrees to notify the EPA Project Officer of public or media events publicizing the

accomplishment of significant events related to construction and/or site reuse projects as a result of this agreement, and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.

4. To increase public awareness of projects serving communities where English is not the predominant language, CARs are encouraged to include in their outreach strategies communication in non-English languages. Translation costs for this purpose are allowable, provided the costs are reasonable.

D. Administrative Record

1. The CAR shall establish an Administrative Record that contains the documents that form the basis for the selection of a cleanup plan. Documents in the Administrative Record shall include the ABCA; site investigation reports; the cleanup plan; cleanup standards used; responses to public comments; and verification that shows that cleanups are complete. The CAR shall keep the Administrative Record available at a location convenient to the public and make it available for inspection. The Administrative Record must be retained for three (3) years after the termination of the cooperative agreement subject to any requirements for maintaining records of site cleanups ongoing at the time of termination contained in the recipient's Closeout Agreement.

E. Implementation of RLF Cleanup Activities

1. The CAR shall ensure the adequacy of each RLF cleanup in protecting human health and the environment as it is implemented. Each loan and subgrant agreement shall contain terms and conditions, subject to any required approvals by the state or tribal regulatory oversight authority, that allow the CAR to change cleanup activities as necessary based on comments from the public or any new information acquired.
2. If the borrower or subgrantee is unable or unwilling to complete the RLF cleanup, the CAR shall ensure that the site is secure. The CAR shall notify the appropriate state agency and EPA to ensure an orderly transition should additional activities become necessary.

F. Completion of RLF Cleanup Activities

1. The CAR shall ensure that the successful completion of an RLF cleanup is properly documented. This must be done through a final report or letter from a Qualified Environmental Professional, or other documentation provided by a State or Tribe that shows cleanups are complete (including No Further Action letters, institutional controls, etc.). This documentation must be included as part of the Administrative Record.

VI. REVOLVING LOAN FUND REQUIREMENTS

A. Prudent Lending and Subgranting Practices

1. The CAR is expected to establish economically sound structures and day-to-day management and processing procedures to maintain the RLF and meet long-term brownfield cleanup lending/subgranting objectives. These include establishing: underwriting principles that can include the establishment of interest rates, repayment terms, fee structure, and collateral requirements; and, lending/subgranting practices that can include loan/subgrant processing, documentation, approval, servicing, administrative procedures, collection, and recovery actions.
2. The CAR shall not incur costs under this cooperative agreement for loans subgrants or other eligible costs until an RLF cooperative agreement workplan has been submitted to and approved the EPA Project Officer or program manager. The CAR shall ensure that the objectives of the workplan are met through its or the fund manager's selection and structuring of individual loans/subgrants and lending/subgranting practices. These activities shall include, but not be limited to the following:
 - a. Considering awarding subgrants on a competitive basis. If the CAR decides not to award any such subgrants competitively, it must document the basis for that decision and inform the EPA Project Officer in the first quarterly performance report. The CAR must inform the EPA Project Officer if the CAR subsequently decides to award subgrants competitively in the quarterly performance report immediately following the decision.
 - b. Establishing appropriate project selection criteria consistent with federal and state requirements, the intent of the RLF program, and the cooperative agreement entered into with EPA.
 - c. Establishing threshold eligibility requirements whereby only eligible borrowers or subgrantees receive RLF financing.
 - d. Developing a formal protocol for potential borrowers or subgrantees to demonstrate eligibility, based on the procedures described in the initial RLF application proposal and cooperative agreement application. Such a protocol shall include descriptions of projects that will be funded, how loan monies will be used, and qualifications of the borrower or subgrantee to make legitimate use of the funds. Additionally, CARs shall ask borrowers or subgrantees for an explanation of how a project, if selected, would be consistent with RLF program objectives, statutory requirements and limitations, and protect human health and the environment.
 - e. Requiring that borrowers or subgrantees submit information describing the borrower's or subgrantee's environmental compliance history. The CAR shall consider this history in an analysis of the borrower or subgrant recipient as a cleanup and business risk.
 - f. Establishing procedures for handling the day-to-day management and processing of loans and repayments.
 - g. Establishing standardized procedures for the disbursement of funds to the borrower or subgrantee.

B. Inclusion of Additional Terms and Conditions in RLF Loan and Subgrant Documents

1. All loans and subgrants must include the information required by 2 CFR § 200.331(a). EPA has developed an optional template to use in creating this agreement that is available on EPA's [Subaward Policy](#) internet page. EPA does not require CARs to use the template.
2. The CAR shall ensure that the borrower or subgrantee meets the cleanup and other program requirements of the RLF cooperative agreement by including the following special terms and conditions in RLF loan agreements and subgrants:
 - a. Borrowers or subgrantees shall use funds only for eligible activities and in compliance with the requirements of CERCLA § 104(k) and applicable federal and state laws and regulations. (See [Section I.A.2.](#) and [Section II.](#))
 - b. Borrowers or subgrantees shall ensure that the cleanup protects human health and the environment.
 - c. Borrowers or subgrantees shall document how funds are used.
 - d. Borrowers or subgrantees shall maintain records for a minimum of three (3) years following completion of the cleanup financed all or in part with RLF funds unless one of the conditions described at [2 CFR § 200.333](#) is present. Borrowers or subgrantees shall obtain written approval from the CAR prior to disposing of records. CARs shall also require that the borrower or subgrantee provide access to records relating to loans and subgrants supported with RLF funds to authorized representatives of the federal government. As stated in [Section IV.F.](#), records related to the closeout agreement must be retained by the CAR for the duration of the closeout agreement and retained for a period of three (3) years following termination or discontinuation of this Closeout Agreement.
 - e. Borrowers or subgrantees shall certify that they are not currently, nor have they been, subject to any penalties resulting from environmental non-compliance at the site subject to the loan or subgrant.
 - f. Borrowers or subgrantees shall certify that they are not potentially liable under CERCLA § 107 for the site or that, if they are, they qualify for a limitation or defense to liability under CERCLA. If asserting a limitation or defense to liability, the borrower or subgrantee must state the basis for that assertion. When using cooperative agreement funds for petroleum-contaminated brownfield sites, borrowers or subgrantees shall certify that they are not a viable responsible party or potentially liable for the petroleum contamination at the site. The CAR may consult with EPA for assistance with this matter.
 - g. Borrowers or subgrantees shall conduct cleanup activities as required by the CAR.
 - h. Subgrantees, other than borrowers, shall comply with all applicable EPA assistance regulations (2 CFR Parts 200 and 1500). All procurements conducted with subgrant funds, but not loans, must comply with Procurement Standards of 2 CFR §§ 200.317 through 200.326, as applicable.

- i. Borrowers must comply with the internal control requirements specified at 2 CFR § 200.303 and are subject to the 2 CFR Part 200, Subpart F, *Audit Requirements*. The CAR must oversee and manage loans as required by 2 CFR §§ 200.330 through 200.332. No other provisions of the Uniform Grant Guidance apply directly to borrowers.
- j. A term and condition or other legally binding provision shall be included in all loans and subgrants entered into with the funds under this agreement, or when funds awarded under this agreement are used in combination with non-federal sources of funds, to ensure that borrowers and subgrantees comply with all applicable federal and state laws and requirements. In addition to CERCLA § 104(k), federal applicable laws and requirements include 2 CFR Parts 200 and 1500.
- k. EPA provides general information on statutes, regulations and Executive Orders that apply to EPA grants on the [Grants internet site](https://www.epa.gov/grants) at www.epa.gov/grants. Many federal requirements are agreement or program specific and EPA encourages CARs to review the terms of their cooperative agreement carefully and consult with their EPA Project Officer for advice if necessary.

C. Default

1. In the event of a loan default, the CAR shall make reasonable efforts to enforce the terms of the loan agreement including proceeding against the assets pledged as collateral to cover losses to the loan. If the cleanup is not complete at the time of default, the CAR is responsible for:
 - a. documenting the nexus between the amount paid to the borrower (bank or other financial institution) and the cleanup that took place prior to the default; and
 - b. securing the site (e.g., ensuring public safety) and informing the EPA Project Officer and the State.

VII. DISBURSEMENT, PAYMENT, AND CLOSEOUT

For the purposes of these Terms and Conditions, the following definitions apply: “payment” is EPA’s transfer of funds to the CAR; the CAR incurs an “obligation” when it enters into an agreement with a borrower or a subgrantee; “disbursement” is the transfer of funds from the CAR to the borrower or subgrantee. The CAR may also disburse funds to a contractor or to pay an allowable cost (e.g. personnel compensation) as provided in [2 CFR § 200.305\(b\)\(1\)](https://www.ecfr.gov/current/title-49/chapter-I/subchapter-B/part-200/subpart-b/section-200.305(b)(1)). “Closeout” refers to the process EPA follows to both ensure that all administrative actions and work required under the cooperative agreement have been completed and to establish a Closeout Agreement to govern the use of program income.

A. Methods of Disbursement

1. The CAR may choose to disburse funds to the borrower or subgrantee by means of ‘actual expense’ or ‘schedule.’ If the schedule method is used, the recipient must ensure that the schedule is designed to reasonably approximate the borrower’s or subgrantee’s incurred costs.
 - a. An ‘actual expense’ disbursement approach requires the borrower or subgrantee to submit documentation of the borrower’s or subgrantee’s expenditures (e.g., invoices) to the CAR prior to requesting payment from EPA.
 - b. A ‘schedule’ disbursement is one in which all, or an agreed upon portion, of the obligated funds are disbursed to the borrower or subgrantee on the basis of an agreed upon schedule (e.g., progress payments) provided the schedule minimizes the time elapsing between disbursement by the CAR and the borrower or subgrantee’s payment of costs incurred in carrying out the loan/subgrant. In unusual circumstances, disbursement may occur upon execution of the loan or subgrant. The CAR shall submit documentation of disbursement schedules to EPA.
 - c. If the disbursement schedule of the loan/subgrant agreement calls for disbursement of the entire amount of the loan/subgrant upon execution, the CAR shall demonstrate to the EPA Project Officer that this method of disbursement is necessary for purposes of cleaning up the site covered by the loan/subgrant. Further, the CAR shall include an appropriate provision in the loan/subgrant agreement which ensures that the borrower/subgrantee uses funds promptly for costs incurred in connection with the cleanup and that interest accumulated on schedule disbursements is applied to the cleanup.

B. Schedule for Closeout

1. There are two fundamental criteria for closeout:
 - a. Final payment of funds from EPA to the CAR following the end date for the cooperative agreement or prior to the end date when the CAR has disbursed all of the EPA funding of the funds awarded; and
 - b. Completion of all cleanup activities funded completely, or in part, by direct EPA funding from the amount of the award.
2. The first criterion of cooperative agreement closeout is met when the CAR receives all payments from EPA. The second closeout criterion is met when all cleanup activities funded by the cooperative agreement are complete.
3. The CAR must follow [Section IV., Closeout Agreement and Use of Post Cooperative Agreement Program Income](#) for any retained and future program income generated after closeout. Eligible uses include continuing to operate an RLF for brownfield site cleanup and/or other brownfield site activities as identified in item 6 of the *Closeout Agreement and Use of Post Cooperative Agreement Program Income*.

C. Compliance with Closeout Schedule

1. If the CAR fails to comply with the closeout schedule, any funds attributable to the cooperative agreement, including retained program income not obligated under loan agreement to a borrower or subgrantee, may be subject to federal recovery.

D. Final Requirements

1. The CAR must submit the following documentation:
 - a. The Final Technical Cooperative Agreement Report as described in [Section III.F.](#) of these Terms and Conditions.
 - b. Administrative and Financial Reports as described in the Grant-Specific Administrative Terms and Conditions of this agreement.
2. The CAR must ensure that all appropriate data have been entered into ACRES or all hardcopy Property Profile Forms are submitted to the EPA Project Officer.

E. Recovery of RLF Assets

1. In case of termination, the CAR shall return to EPA its fair share of the value of the RLF assets consisting of cash, receivables, personal and real property, and notes or other financial instruments developed through use of the funds. EPA's fair share is the amount computed by applying the percentage of EPA participation in the total capitalization of the RLF to the current fair market value of the assets thereof. EPA also has remedies under *Remedies for Noncompliance* at 2 CFR §§ 200.338 through 200.342 and CERCLA § 104(k) when EPA determines that the value of such assets has been reduced by improper/illegal use of cooperative agreement funding. In such instances, the CAR may be required to compensate EPA over and above the EPA's share of the current fair market value of the assets. Nothing in this agreement limits EPA's authorities under CERCLA to recover response costs from a potentially responsible party.

F. Loan Guarantees

1. If the CAR chooses to use the RLF funds to support a loan guarantee approach, the following terms and conditions apply:
 - a. The CAR shall:
 - i. Document the relationship between the expenditure of CERCLA § 104(k) funds and cleanup activities;
 - ii. Maintain an escrow account expressly for the purpose of guaranteeing loans, by following the payment requirement described under the Escrow Requirements term and condition below; and
 - iii. Ensure that cleanup activities guaranteed by RLF funds are carried out in accordance with CERCLA § 104(k), CERCLA § 104(g) relating

to compliance with the Davis-Bacon Act, and applicable federal and state laws and will protect human health and the environment.

- b. Payment of funds to a CAR shall not be made until a guaranteed loan has been issued by a participating financial institution. Loans guaranteed with RLF funds shall be made available as needed for specified cleanup activities on an “actual expense” or “schedule” basis to the borrower. (See [Section VII.A., Methods of Disbursement](#)). The CAR’s escrow arrangement shall be structured to ensure that the CERCLA § 104(k) funds are properly “disbursed” by the recipient for the purposes of the cooperative agreement as required by 2 CFR § 200.305. If the funds are not properly disbursed, the CERCLA § 104(k) funds that the recipient places in an escrow account will be subject to the interest recovery provisions of 2 CFR § 200.305.
- c. To ensure that funds transferred to the CAR are disbursements of assisted funds, the escrow account shall be structured to ensure that:
 - i. The recipient does not retain the funds;
 - ii. The recipient does not have access to the escrow funds on demand;
 - iii. The funds remain in escrow unless there is a default of a guaranteed loan;
 - iv. The organization holding the escrow (i.e., the escrow agency), shall be a bank or similar financial institution that is independent of the recipient; and
 - v. There must be an agreement with the financial institution participating in the guaranteed loan program which documents that the financial institution has made a guaranteed loan to clean up a brownfield site in exchange for access to funds held in escrow in the event of a default by the borrower or subgrantee.
- d. Federal Obligation to the Loan Guarantee Program - Any obligations that the CAR incurs for loan guarantees in excess of the amount awarded under the cooperative agreement are the CAR’s responsibility. This limitation on the extent of the Federal Government’s financial commitment to the CAR’s loan guarantee program shall be communicated to all participating banks and borrower or subgrantee.
- e. Repayment of Guaranteed Loans - Upon repayment of a guaranteed loan and release of the escrow amount by the participating financial institution, the CAR shall return the cooperative agreement funds placed in escrow to EPA based on disposition instructions provided by the EPA Project Officer. Alternatively, the CAR may, with EPA approval:
 - i. Guarantee additional loans under the terms and conditions of the agreement; or
 - ii. Amend the terms and conditions of the agreement to provide for another disposition of funds that will redirect the funds for other brownfield sites’ related activities authorized by the terms of the cooperative agreement or, if applicable, a Closeout Agreement.

REAL ESTATE



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: July 14, 2021

RE: Leasing Brokerage Services Contract
New Jersey Bioscience Center

Summary

The Members are asked to approve the award of the leasing brokerage services contract for the New Jersey Bioscience Center (NJBC) to Jones Lang LaSalle (JLL) of Parsippany, New Jersey.

Background

On April 19, 2021, Internal Process Management (IPM) publicly advertised a Request for Proposals (RFP) for leasing brokerage services at NJBC. If necessary, the Authority has the ability to add additional properties to the scope of services. The current leasing broker contract expires on July 31, 2021.

In response to the RFP, IPM received one (1) proposal from JLL, which was reviewed for compliance and evaluated to ensure all of the qualifications, experience, and other requirements as outlined in the RFP were met. JLL meets all the criteria outlined in the RFP and has satisfactorily performed these services for the NJBC over the past five (5) years. The Evaluation Committee recommends that the Authority retain JLL to provide leasing brokerage services for a 2-year term, and if exercised by the Authority, three (3) one (1) year renewal options.

The commission and override rates are fixed for the contract and renewal terms. When a tenant is represented by a broker, JLL enters into an agreement with the tenant's broker and pays the commission to the tenant's broker and JLL receives the override rate. However, the Authority will not pay an override when JLL or a JLL subsidiary or affiliate is the tenant's broker. JLL's commission and override rates are summarized in the following chart:

<u>Lease Period</u>	<u>Commission</u>	<u>Override Rate</u>
Lease Year 1 through 5	5%	2.5%
Lease Year 6 through end of Lease Term	5%	2.5%

Recommendation

Subject to approval of the Chief Executive Officer, I request the Members approve awarding the leasing brokerage services contract for NJBC to Jones Lang LaSalle.

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

Tim Sullivan, CEO

Prepared by: Juan Burgos

BOARD MEMORANDA -FYI ONLY



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: July 14, 2021

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

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

Direct Loan Program:

- 1) Amazing Properties NJ LLC (PROD-00258363), located in South Hackensack Township, Bergen County, was established in 2020 as a real estate holding company formed to purchase the project property. The operating company, Amazing Commerce Inc. is a consolidation of six affiliated companies that sell and manufacture over 500 private label products including vitamins, supplements, bodybuilding, natural home and beauty products. The NJEDA approved a \$1,218,000 Direct loan. Proceeds will be used to assist in the purchase of the project property. Currently the Company has 31 employees and plans to create 15 new jobs over the next two years.

Premier Lender Program:

- 1) 419 Holdings LLC (PROD-00258485), located in East Hanover Township, Morris County, was formed in 2020 as a real estate holding company to purchase the project property. The operating company, TEC Installations Inc. ("TEC"), was formed in 1980 to manufacture and install conveyors and conveying equipment such as conveyor screws, trollies, rails, roller conveyers, package stop, turntables, belt conveyors and other related equipment. M&T Bank approved a \$3,060,000 bank loan with a 25% (\$765,000) Authority participation. Proceeds will be used to purchase the project property. The Company currently has 17 employees and plans to create 10 new positions over the next two years.
- 2) American Industrial Supply Corp. Inc. (PROD-00284210), located in Perth Amboy City, Middlesex County, was started in 1978 as a provider of pipe, valve and fittings, customized supply and pipe service, as well as fabrication and ancillary items. Industries served include chemical, facility maintenance, higher education, industrial welding and steel fabrication, municipalities, petrochemical, pharmaceutical, food & health, pipeline, transportation & marine, plumbing and HVAC, and utilities and energy. Provident Bank approved a 50% (\$500,000) Authority guarantee of principal outstanding, in a \$1,000,000 loan to be used for working capital. Currently, the Company has 26 employees and plans to create four new positions within the next two years.

Micro Business Loan Program:

- 1) A & A Control Systems Consulting Limited Liability Company (PROD-00228356 & 00288639), located in Voorhees Township, Camden County, was established in 2010 as a consultant for oil and gas pipeline scada system and resale of the Dark Trace cyber security system. The NJEDA approved a \$22,050 working capital loan and a \$2,450 forgivable loan. Proceeds will be used to supplement payroll and utilities expenses. The Company currently has two employees.
- 2) Bonanza Charters, LLC (PROD-00228193 & 00275643), located in Commercial Township, Cumberland County, was formed in 2014 as a charter fishing boat that offers daily excursions on the Delaware Bay. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable loan. Proceeds will be used to supplement working capital and equipment purchases. The Company currently has one employee.
- 3) Bradley's Hard Surface Cleaning LLC (PROD-00228424 & 00288653), located in West Deptford, Gloucester County, was established in 2011 as a specialty cleaning business that provides carpet cleaning, tile cleaning, pressure washing and disinfecting for commercial businesses. 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 three employees.
- 4) C.E.G. Corporation (PROD-00228152 & 00288626), located in Glen Rock Borough, Bergen County, was formed in 1996 to provide air condition and heating installation and maintenance services. The NJEDA approved a \$45,000 working capital loan and a \$5,000 forgivable loan. Proceeds will be used to supplement payroll, inventory and to purchase equipment. The Company currently has one employee.
- 5) Dad's Computer Repair Limited Liability Company (PROD-00228451 & 00288602), located in Elizabeth City, Union County, was formed in 2011 as a computer shop specializing in computer repairs, sales, and customer training. The NJEDA approved a \$7,380 working capital loan and an \$820 forgivable loan. Proceeds will be used to supplement existing cash from operations to cover equipment, rent, and inventory. The Company currently has one employee.
- 6) Darla Bruno DBA Bruno Healing (PROD-00228436 & 00275641), located in Frenchtown Borough, Hunterdon County, was established in 2018 as a home-based sole proprietorship that offers mental wellness, coaching and healing. The NJEDA approved a \$16,965 working capital loan and a \$1,885 forgivable loan. Proceeds will be used to support payroll expense and cost of hiring a business coach and a web developer. Currently, the Company has one employee.
- 7) EC Enterprises LLC (PROD-00224346 & 00276660), located in Pennsauken Township, Camden County, is an insurance agency that sells personal lines, auto, home, umbrella, life, boat and motorcycle insurance. The Company also sells business owner policies, worker compensation, and commercial auto/truck insurance. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable loan. Proceeds will be used to supplement rent and utility expenses. The Company currently has two employees.
- 8) El Color De Mexico LLC (PROD-00224378 & 00283203), located in Passaic City, Passaic County, was formed in 2016 as a Mexican wholesale and retail store that sells clothing and home goods, and money transmittal and provides travel agency services. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable loan. Proceeds will be used to supplement rent payments. The Company currently has two employees.

- 9) Enat Deliveries Limited Liability Company (PROD-00224563 & 00284211), located in North Bergen Township, Hudson County, was formed in 2012 as a transportation company that provides affordable, reliable, and professional services for any delivery needs. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable loan. Proceeds will be used to supplement existing cash from operations to cover payroll. The Company currently has one employee.
- 10) EZ Rent A Car (PROD-00224299 & 00288633), located in Fort Lee Borough, Bergen County, was established in 1999 as a daily passenger car rental company. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable loan. Proceeds will be used to supplement payroll and lease payments. The Company currently has four employees.
- 11) Feehan Industries, LLC (PROD-00224358 & 00283707), located in Garwood Borough, Union County, was formed in 2018 as a self-service laundromat. The NJEDA approved a \$45,000 working capital loan and a \$5,000 forgivable loan. Proceeds will be used to supplement business rental expenses. The Company currently has one employee.
- 12) Good Morning Dental LLC (PROD-00228271 & 00288635), located in Hackensack City, Bergen County, has been serving the inner-city community since 2009. The Company offers the highest standard of care for their patients as demonstrated by their excellent reviews and referrals. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable loan. Proceeds will be used to supplement rent payments. The Company currently has two employees.
- 13) Joseph S Battiato DBA Country Market (PROD-00228455 & 00288641) is located in Mannington Township, Salem County. The Company has been in business since 1995, selling shortcakes and ice cream from a commercial kitchen and also has a trailer for parties and events. The NJEDA approved a \$45,000 working capital loan and a \$5,000 forgivable loan. Proceeds will be used to supplement inventory and payroll. The Company currently has one employee.
- 14) Kuun, LLC (PROD-00228249 & 00264600), located in Fort Lee Borough, Bergen County, was formed in 2016 as a high-end clothing store that caters to women between the ages of 40 to 60. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable loan. Proceeds will be used to supplement existing cash from operations to cover inventory expenses. The Company currently has one employee.
- 15) New Life Dream Academy A NJ Nonprofit Corporation (PROD-00224243 & 00275644), located in Jersey City, Hudson County, was established in 2013 as a daycare center that operates two NJ licensed daycare centers. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable loan. Proceeds will be used to supplement payroll, furniture and fixtures for both locations. The Company currently has seven employees.
- 16) Pacific Hospitality LLC DBA Prawn (PROD-00228303 & 00288599), located in Cape May City, Cape May County, was established in 2016 as a seafood restaurant and market. The NJEDA approved a \$24,641.31 working capital loan and a \$2,737.92 forgivable loan. Proceeds will be used to purchase equipment, furniture and fixtures. The Company currently has two employees.
- 17) Papa's Travel Store, Inc. (PROD-00228537 & 00288637), located in Secaucus Town, Hudson County, was formed in 1979 as a full-service travel agency. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable loan. Proceeds will be used to supplement working capital costs for payroll and rent expenses. The Company currently has six employees.

- 18) Quick Stop Convenience Store LLC (PROD-00228496 & 00288644), located in Dover Town, Morris County, was formed in 2013 as a convenience store that primarily sells cigarettes and lottery tickets. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable loan. Proceeds will be used toward working capital expenses for rent and utilities. The Company currently has one employee.
- 19) Redhawk Research LLC (PROD-00224208 & 00264092), located in Tenaflly Borough, Bergen County, was formed in 2013 as a Data Analytics and Technology Company. The Company builds web-based software for their business clients and offers Custom Computer Programming Services. The NJEDA approved a \$25,000 working capital loan and a \$2,500 forgivable loan. Proceeds will be used to supplement working capital needs related to software development. The Company currently has two employees.
- 20) RMV10 LLC DBA Fresh Water Greens (PROD-00228280 & 00288595), located in Deptford Township, Gloucester County, was established in 2012. The Company grows herbs and lettuces hydroponically and supplies to grocery chains such as ShopRite, Acme and Whole Foods in southern New Jersey. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable loan. Proceeds will be used to support payroll and inventory payments. The Company currently has seven employees.
- 21) Singularity LLC (PROD-224395 & 00276148), located in West New York Town, Hudson County, was formed in 2011. The Company manages and maintains computer systems for small businesses and non-profit organizations through technology management, strategic planning, and web design. The NJEDA approved a \$22,500 working capital loan and a \$2,500 forgivable loan. Proceeds will be used to supplement payroll expenses and purchase equipment. The Company currently has two employees.
- 22) Superstarz Barber Shop LLC (PROD-00224500 & 00265134), located in Jersey City, Hudson County, was formed in 2011 as a men's hair salon. The NJEDA approved a \$16,650 working capital loan and a \$1,850 forgivable loan. Proceeds will be used to supplement lease payments. The Company currently has one employee.
- 23) Vineland Realty Corp. (PROD-00228199 & 00281802) is located in Vineland City, Cumberland County. Formed in 1998, the Company is a property management and real estate sales company for residential buyers. The NJEDA approved a \$45,000 working capital loan and a \$5,000 forgivable loan. Proceeds will be used to supplement working capital expenses such as salary, rent and utilities. The Company currently has two employees.



Tim Sullivan, CEO

Prepared by: G. Robins



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: July 14, 2021

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

The following approvals were made pursuant to Delegated Authority for Leases and ROE/
Licenses in April, May and June 2021 :

LEASES

TENANT	LOCATION	TYPE	TERM	S.F.
API Pharma Tech	Bioscience Center Incubator	Month to Month	One Year	1,600sf
Genomic Prediction	Bioscience Center Incubator	Month to Month	One Year	3,200sf
Fidelis Pharma	Bioscience Center Incubator	Extension	One Year	125sf
Bright Cloud International	Bioscience Center Incubator	Extension	One Year	900sf
Histobridge	Bioscience Center Incubator	Extension	One Year	800sf
Sonder Research X	Bioscience Center Incubator	Amendment/ Extension	13 months	2,070sf
Pharmanest Inc.	Bioscience Center Incubator	New	One Year	125sf
Chobani	Bioscience Center Step Out Labs	Amendment	32 months	2,034sf

TENANT	LOCATION	TYPE	TERM	S.F.
Bionex Pharmaceuticals	Bioscience Center Step Out Labs	Renewal	3 Years	1,998sf

COVID19 LEASE DEFERRAL

TENANT	LOCATION	TYPE	TERM	AMOUNT
None				

RIGHT OF ENTRY/LICENSES/EXTENSIONS

ENTITY	LOCATION	TYPE	CONSIDERATION
NJ Department of Health	Barnes Street Parking Lot	MOU for use of Lot (May and June)	\$0
Middlesex County Fair	Tech Expansion Site	ROE to park ad trailer for fair.	\$0
Youth Sports Festival	Tech Expansion Site	ROE Amendment changing dates of carnival	\$0

MISCELLANEOUS

ENTITY	LOCATION	TYPE	CONSIDERATION
None.			



Tim Sullivan, CEO

Prepared by: Stacy Pellegrino