MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: November 10, 2021

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

Request:

The Members are asked to approve:

1) The attached special adopted new rules and concurrent proposed new rules for the new Aspire 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; and

2) The creation of the Aspire Program, a gap financing tax incentive program as initially authorized by the New Jersey Economic Recovery Act of 2020 (Sections 54 through 67 of P.L. 2020, c. 156 and later amended by Sections 22 through 29 of P.L. 2021 c.160), to encourage the development of commercial, mixed use, and residential real estate projects in New Jersey by providing tax credits in an amount based on a percentage of the project's costs.

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 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.

On July 7, 2021, Governor Murphy signed P.L. 2021 c.160 amending P.L. 2020, c.156 and further improving the programs established under the ERA.

The program being presented for the Members' approval in this memorandum is the Aspire Program – one of the 15+ programs under the ERA. The Aspire Program is a gap financing incentive program designed to catalyze the development of commercial, mixed-use and residential real estate development projects in New Jersey.

This memorandum provides a summary about the Aspire Program including program limits, eligibility criteria, specific program requirements, application process and the underwriting process, and general details about the program. 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 and General Description

The Aspire Program encourages place-based economic development in the State by providing tax credits for ten years (the "eligibility period"). The amount of tax credits a real estate development project (referred to in the statute as a "redevelopment project") receives is generally a percentage of the project's costs and is subject to a statutory cap determined by the project location and other aspects of the project. The overview provided here highlights key aspects of the program. Additional program details are included in the sections below, and full program details are contained in the draft rules (attached) and the statute.

To be eligible for the Aspire Program, a project must meet various eligibility criteria at the time of application. For example, a project must:

- Demonstrate through NJEDA analysis that without the incentive award, the redevelopment project is not economically feasible;

- Demonstrate that a project financing gap (including review of a reasonable and appropriate rate of return) exists and the redevelopment project will generate a below market rate of return;

- Be located in a designated incentive area (except a film production project);

- Include a developer equity participation of at least 20 percent of the total development cost (or 10 percent in a Government Restricted Municipality (GRM));

- For commercial projects, result in a net positive economic benefit to the State;

- Meet specific size and/or cost thresholds, depending on where the project is located and;

- Meet a minimum eligible score as outlined in the Aspire Program scoring criteria.

Collectively, projects under the Aspire Program and the Emerge Program – a separate ERA tax incentive program focused on attracting high-quality jobs to New Jersey – are subject to a program cap of $1.1 billion per year for the first six years of the programs, with the cap split between northern and southern counties. For the first six years, unused amounts may be carried forward each year, subject to geographic limits, and any remaining unused tax credits are available in the seventh year without consideration of geographic limits.

Tax credit awards under Aspire are calculated based on a percentage of project costs (which are the eligible costs of the project), capped based on the type and location of the project. Transformative projects – which is a distinction given to projects of special economic importance – are outlined in further detail later in this memorandum.

Specifically, new construction projects utilizing federal Low Income Housing Tax Credits administered by the New Jersey Housing and Mortgage Finance Agency (HMFA) are limited to 60 percent of project costs, up to a maximum of $60 million. Commercial projects located in a GRM are limited to 50 percent of project costs, up to a maximum of $60 million. All other non-transformative projects are limited to 45 percent of project costs, not to exceed $42 million.

In addition to meeting the program eligibility, the developer and any co-applicant must be in substantial good standing with the NJ Department of Labor and Workforce Development, the NJ Department of Environmental Protection, and the Department of Treasury (as determined by each Department). If a compliance issue exists, the eligible developer or co-applicant may have an agreement with the respective Department that includes a practical corrective action plan, as applicable. The eligible developer and any co-applicant must have no unpaid liability in excess of any threshold dollar amount(s) that may be established by each respective Department. Furthermore, the developer will be required to provide, prior to execution of a grant agreement, a valid tax clearance certificate from the NJ Division of Taxation within the NJ Department of Treasury.

The Aspire Program rules also require that the project demonstrate that it will comply with environmental laws (including flood hazard requirements). All projects that receive Aspire support must also meet minimum environmental and sustainability standards (green building requirements), pay prevailing wages to construction workers and building service workers, and for projects with a retail, warehouse, and/or hospitality establishments in which the State has a proprietary interest, the relevant establishment must enter into a labor harmony agreement with a labor organization or cooperating labor organizations which represent relevant employees in the State i.e. retail, warehouse, and/or hospitality workers, unless the

Authority determines the project would not be able to go forward if a labor harmony agreement was required.

Applicants with a project whose total project cost exceeds or equals $10 million must also enter into a Community Benefits Agreement with NJEDA and the county or municipality in which the project is located. The statute provides an exception if the municipality certifies the redevelopment agreement or the Aspire Program approval letter and the redevelopment agreement or approval letter satisfies the standards for a Community Benefits Agreement; however, staff does not propose for the approval letter to contain Community Benefits Agreement provisions.

In addition, a project must comply with certain standards during the term of an Aspire Program project agreement.

Some of the areas described above are outlined in greater detail further in this memorandum and in the attached rule proposal.

Eligibility Criteria

The following highlights key eligibility requirements for the Aspire Program. Full eligibility details are contained in the draft proposed rules in section N.J.A.C. 19:31-23.3, based on Section 57 of the ERA (P.L. 2020, c.156, amended by Section 23 of P.L. 2021 c.160). To be eligible, a project must meet various eligibility criteria at application, which the Board ascertains when the project is presented to the Board, and at project completion, when the developer must submit certifications evidencing satisfaction of Program requirements and conditions.

Eligible Incentive Area

As part of eligibility for the Aspire Program, a project must be located in an eligible incentive location, which may include: Planning Area 1, Aviation District, Port District, or Planning Area 2 or other Designated Center that is within a half mile of a rail, bus, or ferry transit station or a high frequency bus stop. Each of these geographic locations are statutorily defined, and the Authority maintains an interactive map to provide more clarity to potential applicants as to which of the aforementioned eligible incentive locations the proposed project falls within. The statute also provides clarification surrounding certain project types. Specifically, transformative projects may be considered eligible if they are located in a government-restricted municipality, an enhanced area, or distressed municipality. Film production projects have no geographic restrictions under Aspire and may be located anywhere in the state.

Project Size / Cost Thresholds

A project must meet minimum size and cost thresholds in order to be eligible under Aspire, with specific thresholds largely based on whether the project is considered commercial or residential.

Commercial projects must be a minimum of 100,000 square feet of retail or commercial space, exclusive of parking, with the majority of space being non-residential (that is, the project must be predominantly commercial).

Residential projects are subject to thresholds based on total project cost as opposed to size and must be predominantly residential. Specifically, residential projects located in a GRM or qualified incentive tract, must have a minimum of $5 million in project costs. Residential projects located in a municipality with a population less than 200,000 must have a minimum of $10 million in project costs, and a residential project located in a municipality with a population greater than 200,000 must have a minimum of $17.5 million in project costs.

For any project that includes newly constructed residential units (that is, not a project consisting solely of rehabilitated or renovated existing units, with no change to the composition of units or creation of new units), at least 20 percent of the residential units must be reserved for occupancy by low- and moderate-income households with affordability controls as required under the "Fair Housing Act," P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et al.).

Project Financing Gap

Given that the Aspire Program is intended to catalyze redevelopment projects that would not be possible without the Aspire tax credits, the statute requires that a project must demonstrate the existence of a project financing gap in order to be eligible for tax credits under Aspire.
This means that the project must demonstrate that there is part of the total development cost, including reasonable and appropriate return on investment, that remains to be financed after all other sources of capital have been accounted for. Total development cost is used to evaluate the return and is based upon all costs incurred by the developer prior to completing the project, versus project (that is, eligible) costs as defined in the rules, which excludes certain costs such as soft costs in excess of 20 percent, land acquisition costs, and developer fees.

The reasonable and appropriate return on investment is based on the amount of capital contributed by the developer (equity), which must be 20 percent of the total development cost (or 10 percent in a GRM). The Authority will consider as equity other sources of capital such as deferred development fees, or proceeds from the sale of Federal tax credits the project may receive. To determine the reasonable and appropriate return on investment, the Authority will typically utilize a third-party analysis that considers factors including but not limited to: project type, scale, and geography. An overview of this analysis and the methodology proposed by Staff is included in Appendix B – Reasonable and Appropriate Return on Investment.

Further information regarding the gap analysis can be found in N.J.A.C. 19:31-23.6.

Net Positive Economic Benefit Test

Pursuant to the statute, and excepting situations described in this section, projects applying for assistance under the Aspire Program must demonstrate that the project will yield a net positive economic benefit to the State. Instead of prescribing specific net benefit thresholds, the statute instructs the Authority to establish thresholds that result in a positive economic benefit for the State over the eligibility period of a project. The statute further permits the Authority to establish a second threshold that is up to 35 percent lower for projects located in a government-restricted municipality. As outlined in the attached rule proposal, staff propose that projects located in a government restricted municipality must yield a net positive economic benefit to the State of 150%, whereas all other projects must yield a 185% net positive economic benefit.

The statute exempts residential projects, as well as projects that involve a food delivery source or health care or health services center that meet certain parameters as outlined in the attached rules, from the statutory requirement of meeting the net positive economic benefit threshold.

As with the Emerge Program, staff is proposing to use the IMPLAN model to assist with determining the economic benefits of the project. IMPLAN is a third-party economic development model that is widely known, understood and utilized at the state, federal, and international levels. Among widely-known, national-level third-party models, IMPLAN is the most easily understood by the broadest set of stakeholders.

The net positive economic benefit analysis will include direct and indirect tax revenues for ongoing benefits at the State level and also direct, indirect and induced tax revenues at the State level for construction benefits. The local tax benefits will only be included when they benefit the State. An inflation rate and discount rate will also be used based on market conditions, economic conditions, and uncertainty in the company's commitment.

Please refer to the Appendix C for the "Net Benefit Analysis – Overview" for a discussion of the test and model.

Project Scoring

The Authority is statutorily obligated to establish scoring criteria for the evaluation of proposed projects, which can be used to set a minimum acceptable score or to allocate tax credits in circumstances where there are more project requests than available credits.

Given the relatively large pool of available credits, staff does not anticipate that the Aspire Program will be oversubscribed. Accordingly, staff are recommending utilizing a minimum score approach to assess whether a proposed project is consistent with the objectives, policy goals, and principles of the Aspire Program, rather than using scoring as a means to competitively rank or compare projects against each other. If the volume of Aspire tax credit award requests is greater than currently anticipated, staff will present to the Board a revised scoring that can be used for comparative project ranking.

Please refer to Appendix D for the "Aspire Scoring Criteria" for the specific proposed criteria, and further clarification on each of the different aspects the Authority will consider in its scoring evaluation of proposed projects.

Green Building Standards

The ERA requires projects under Aspire to meet "minimum environmental and sustainability standards," which are statutorily defined as "standards established by the authority in accordance with the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources to reduce environmental degradation and encourage long-term cost reduction." The Green Building Manual is available online at http://greenmanual.rutgers.edu/.

The Authority had originally developed in 2013, and later updated in 2016, the "Green Building Standards" to evaluate Grow NJ and ERG projects. Staff has now updated the "Green Building Standards". The Green Building Standards lists options that apply the best practice principles of the Green Building Manual to the applicant's specific type of project. Please see Appendix E for a copy of the Authority's 2021 "Green Building Standards".

Fiscal and Resident Protections

Letter of Support and Community Benefits Agreement

As part of an application for Aspire tax credits, a developer must provide a letter of support from the governing body of the municipality or municipalities in which the project is located.

Furthermore, the ERA requires developers of projects with a total project cost equaling or exceeding $10 million to enter into a Community Benefits Agreement (CBA) with the Authority and the county or municipality in which the project is located. Staff propose to use the tax credit award process to provide economic resources that support CBA programs. Specifically, the rules allow for soft costs to include per-certification costs for benefits and services provided under the CBA that are not directly related to construction of the project. Additionally, CBA costs incurred after certification can be included as cash flow. However, the rules limit the sum of (1) CBA project development soft costs prior to project certification and (2) the discounted value of any CBA-supporting expenditures derived from annual payments made over the course of the project eligibility period to five percent of the project cost.

A developer shall not be required to enter into a community benefits agreement if the developer submits to the Authority a copy of either the developer's approval letter from the Authority or a redevelopment agreement applicable to the redevelopment project, provided that the approval letter or redevelopment agreement is certified by the municipality in which the redevelopment project is located, and includes provisions that meet or exceed the statutory standards required for a community benefits agreement in the ERA as amended by P.L. 2021, c.160 and as determined by the Chief Executive Officer. Staff does not know whether municipalities will include the Community Benefits Agreement requirements in a redevelopment agreement, because not all community benefit expenditures in a redevelopment agreement would otherwise be included in the Aspire project cost as provided in the Aspire rules. In any event, staff does not anticipate proposing that the approval letter contain any Community Benefits Agreement provision.

In other respects, the proposed rules implement the Community Benefits Agreement similarly to the Emerge Program. The rules require that the Community Benefits Agreement include a list of contributions by the developer and the monetary equivalent for any non-monetary contribution. The ERA also requires that the Community Benefits Agreement create a community advisory committee (CAC). The CAC is required to produce an annual report evaluating whether the developer is in compliance with the terms of the Community Benefits Agreement.

The Aspire Program rules, at N.J.A.C. 19:31-23.8 (e)(6)(ii), provide for a non-binding mediation process to be implemented if the CAC's annual report indicates that the developer is not in compliance with the Community Benefits Agreement. The Authority will serve as or identify a mediator. The CAC, municipality or county, as applicable, and the developer will have 60 days from the Authority's notice of the mediator to resolve any differences. The results of the mediation will be reported to the Authority. If resolution is not achieved, then the Authority will assign a hearing officer to perform a review of the written record, with discretion to require an in-person hearing. The hearing officer shall issue an advisory written report to the Authority's Chief Executive Officer with finding(s) and recommendation(s). The developer, municipality or county, and the CAC will also have the opportunity to file written comments and exceptions regarding the report within five business days from receipt of the report. Based on the review of the written report and submitted comments and exceptions, the Chief Executive Officer will determine compliance or non-compliance.

If the non-compliance is not due to the developer and the developer has been using best efforts to cure the non-compliance, then the tax credit amount that the developer may apply in the relevant tax period will be reduced by 120% of the sum of the monetary values of the contributions for which the developer is not in compliance. For any other non-compliance, the developer shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period where documentation demonstrating compliance has been approved by the Authority, for which tax period and each subsequent tax period the full amount of the credit will be allowed.

Profit Sharing with the State in the Event of Excess Return on Investment

The ERA directs the Authority to determine at project certification if the actual financing employed by the applicant is consistent with that submitted at the time of the award approval. In the event that the actual financing utilized makes the financing gap smaller than what was calculated at the time of approval, the award shall be reduced so that project would result in rate of return on investment that is equal to the reasonable and appropriate rate on investment at the time of approval or accept payment from the developer on a pro rata basis. Furthermore, if the actual financing results in the absence of a financing gap, i.e., the project return prior to the incentive meets or exceeds the reasonable and appropriate return on investment determined at board approval, then the award would be forfeited. This analysis would take place prior to the issuance of any tax credits.

Following issuance of the initial tax credit, the Authority is directed by the statute to ensure that the returns realized by the project do not exceed those deemed appropriate at approval, i.e., that the actual return on investment is not greater than the reasonable and appropriate return on investment determined at board approval. This evaluation is to take place at the end of the 7th year of the eligibility period and following the final year of the eligibility period. For any project with returns that exceed the reasonable and appropriate return on investment determined at board approval by more than 15 percent, the project shall pay to the State 20 percent of the amount in excess of the reasonable and appropriate rate of return. This would be accomplished as follows. The evaluation at the end of the 7th year would evaluate actual data for the years to that point and projected data for the remaining years. At that time, the developer would pay into escrow the 20 percent of the amount that is calculated to be in excess of the reasonable and appropriate rate of return. Following the final year of the eligibility period, the Authority will determine if there are actual excess returns and those will be deposited in the State General Fund, with any escrowed funds not owed to the State returned to the developer. If more returns are due to the State than are in the escrow account, the developer shall pay those at that time.

Further discussion of this provision is included in Appendix B – Reasonable and Appropriate Return on Investment.

Transformative Projects

The Aspire statute allows for projects that meet certain parameters to qualify for credit above and beyond the caps that are established for standard projects under Aspire.

To be considered a transformative project, a project must include at least $100 million in total project cost, demonstrate a project financing gap (as with all Aspire projects), and be at least 500,000 square feet or up to 250,000 square feet for film studio projects (square feet are exclusive of parking). Furthermore, transformative projects must leverage the competitive economic development advantages of the State's mass transit assets, higher education assets, and other economic development assets, in attracting or retaining both employers and skilled workers generally or in targeted industries by providing employment or housing.

All transformative projects must also demonstrate special economic importance to New Jersey, for which the Authority has established differing criteria to make that determination based on the type of project.

For commercial projects, the project must demonstrate the following to show that the project is of special economic importance and creates modern facilities, and that:

- With the exception of a film studio project, it is either creating at least 500 new full-time jobs based on the regional averages for employment density for the type of use or uses at the redevelopment project or involves the substantial renovation of a vacant commercial building;
- It is providing opportunities to leverage leadership in a high-priority targeted industry, which may be done through a market analysis evidencing the role the proposed facilities will play in catalyzing said industry or industries and is likely to be evidenced by the existence of one or more proposed anchor tenants.

For residential projects, the project must demonstrate that it is of special economic importance by demonstrating one of the following:

- A project location in a government-restricted municipality, enhanced area, or distressed municipality;
- A reservation of at least 20 percent of new residential units for either low- and moderate-income households or workforce housing that is in addition to the 20 percent reservation for low- and moderate-income households required of all Aspire projects; or
- The substantial renovation of a vacant commercial building.

Residential transformative projects must also meet the one of the following project thresholds:

- At least 1,000 newly constructed residential units;
- For a mixed-use residential project of at least 100,000 square feet (exclusive of parking) of retail or commercial space that is majority commercial space:

    - If the project is located in a government-restricted municipality, 250 or more newly constructed residential units;
    - If the project is located in an enhanced area, 350 or more newly constructed residential units; or
    - Non-government-restricted municipality or enhanced area projects, 600 or more newly constructed residential units.

Transformative projects under Aspire must be located in an incentive area, distressed municipality, government-restricted municipality, or enhanced area. However, film studio projects are not subject to these geographic restrictions and may be located anywhere in the State. No transformative project may comprise of 50 percent or more final point-of-sale retail.

As mentioned above, the significance of being a transformative project for the purposes of tax credit award calculation, is that a transformative project is subject to higher project-specific caps than a standard Aspire project. For transformative projects, a project may receive no greater than 40 percent of eligible project costs, up to a maximum tax credit amount of $350 million. Additionally, the developer may take up to eight years to finish the transformative project and can complete the transformative project in phases. Each phase will constitute its own eligibility period, which allows the developer to earn the issuance of tax credits prior to the completion of the entire redevelopment project.

<u>Post-Approval Process</u>

Aspire is a performance-based program. After approval, the developer must sign an approval letter and subsequently an incentive award agreement with the terms and conditions to receive the tax credit. Upon completion of the project, the developer must submit certifications regarding the capital investment and other eligibility requirements and conditions. The project must demonstrate compliance with eligibility criteria and, among other things, affirmative action, prevailing wage, and, as applicable, labor harmony agreement requirements. The developer must also certify that the project is still operating in a manner that is consistent with the approval for which the tax credit award was based (i.e. commercial projects must still be predominantly commercial).

There are several scenarios where a tax credit award may be reduced or forfeited. These include, but are not limited to, the following, where applicable:

- A project changing so that it would not have been eligible or would have been reviewed under different eligibility criteria:
    - From predominantly residential to predominantly commercial (or the reverse);
    - From a film production project located outside the incentive area to a project that is not a film production project;
    - Absent prior approval by the Authority, to the uses in a commercial transformative project that were used to determine the anticipated employee occupancy or the uses in a non-transformative project that were utilized to determine the net positive economic benefit to the State; or
    - To characteristics used in initial project scoring so that the project no longer achieves the minimum requisite score under the Aspire Program Scoring Criteria;

- Non-compliance with affirmative action, prevailing wage, or any labor harmony agreement requirement;

- The occupancy of a project is reduced to less than 60 percent, where a residential unit shall be considered occupied if the unit is leased; and commercial space shall be considered occupied if the space is leased and the tenant is operating its business in the leased space. Occupancy for the tax period shall be determined as the average of the monthly occupancy for the period;

- Non-compliance with the Community Benefits Agreement as described in the Aspire rules; or

- A material misrepresentation on the developer's application, project completion certification, annual report, or any related submissions. In this case, the rules also state that the Authority may recapture any and all tax credits.

Further information regarding reduction, forfeiture, and recapture of tax credits under Aspire can be found in N.J.A.C. 19:31-23.10.

Rulemaking Process

The ERA authorizes the Authority to promulgate special adoption rules for the Aspire Program, which will be effective immediately upon filing with the Office of Administrative Law and continue for 180 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 Procedure Act's 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 Aspire Program rules, were available for review and of the opportunity to provide informal input.

The Authority staff convened two virtual public "Listening Sessions", which provided an overview of the Aspire Program draft rules and the opportunity for the public feedback, on:

- Friday, September 17th, 2021 at 3:00 p.m.
- Monday, September 20^{h}, 2021 at 3:00 p.m.

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 (aspire@njeda.com) from September 10th through September 24th 2021.

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 Aspire Program and is prepared to sign the certification, subject to the Board taking action to approve the same for submission to the New Jersey Office of Administrative Law for publication in an upcoming issue of the New Jersey Register.

Fees

The fee structure as outlined below is also included in the proposed new rules. Prior to establishing the proposed fee structure for this program as outlined in the proposed new rules, Authority staff conducted an internal review to estimate what the administrative costs to the authority are likely to be to administer the Aspire Program. This review considered areas cross-organizationally where the Aspire Program may require staff time, and the estimated percentage of staff time that would be required.

Fees are determined on a tiered basis based on the project type and project cost associated with the redevelopment project, with a separate tier for transformative projects. (Project cost and type is a reasonable proxy for the complexity of a project and how much staff time is required to evaluate an application.) The relevant tiers in addition to the separate tier for transformative projects include a project utilizing Low Income Housing Tax Credits, any other project with $50 million or less in project costs, any other project with more than $50 million in project costs, and any project applying under the regular Aspire program with approved phases.

An applicant for the Aspire Program will be responsible for a one-time, non-refundable application fee. This fee will be $10,000 for a project utilizing Low Income Housing Tax Credits, $30,000 for any other project with $50 million or less in project costs, $50,000 for any other project with more than $50 million in project costs, $75,000 for any project applying under the regular Aspire program with approved phases, and $100,000 for each phase of a transformative project.

Additionally, prior to the approval of a tax credit award by the Board, the developer will be responsible for a one-time approval fee, which may be refunded if the project is not approved for a tax credit award. This fee will be $50,000 for a project utilizing Low Income Housing Tax Credits, $50,000 for any other project with $50 million or less in project costs, $60,000 for any other project with more than $50 million in project costs, $250,000 for any project applying under the regular Aspire program with approved phases, and $500,000 for each phase of a transformative project.

Prior to the receipt of a tax credit, the developer will be responsible for an issuance fee which will be $50,000 for a project utilizing Low Income Housing Tax Credits, $50,000 for any other project with $50 million or less in project costs, $60,000 for any other project with more than $50 million in project costs, $250,000 for any project applying under the regular Aspire program with approved phases, and $500,000 for each phase of a transformative project.

Throughout the term of the award, the developer will be responsible for a servicing fee of $25,000 for a project utilizing Low Income Housing Tax Credits, $30,000 for any other project with $50 million or less in project costs, $40,000 for any other project with more than $50 million in project costs, $100,000 for any project applying under the regular Aspire program with approved phases, and $200,000 for each phase of a transformative project.

Additionally, the developer may be responsible for a modification fee should the project require modifications to the tax credit. For a modification subject to board approval that fee shall be $30,000 for a project utilizing Low Income Housing Tax Credits, $30,000 for any other project with $50 million or less in project costs, $30,000 for any other project with more than $50 million in project costs, $150,000 for any project applying under the regular Aspire program with approved phases, and $300,000 for each phase of a transformative project

If the developer elects to sell the tax credit, a transfer fee will also apply. That fee for each transfer shall be $10,000 for a project utilizing Low Income Housing Tax Credits, $10,000 for any other project with $50 million or less in project costs, $10,000 for any other project with more than $50 million in project costs, $20,000 for any project applying under the regular Aspire program with approved phases, and $20,000 for each phase of a transformative project

If a developer requests an extension to the date by which the developer shall submit the certification with respect to the capital investment, employment, and other eligibility requirements of the program, a non-refundable extension fee will apply.

Finally, a developer seeking to terminate an existing incentive agreement will be responsible for a termination fee.

Program Evaluation Plan

Staff plans to establish a framework of key performance indicators (KPIs) to quantifiably measure over time how well the Aspire 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 developers applying for the Aspire Program, including demographic information with respect to the development company's leadership. 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 Aspire 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 Aspire Program. These KPIs are still under development.

Recommendation

The Members are asked to approve:

1) The attached special adopted new rules and concurrent proposed new rules for the new Aspire 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; and

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Tim Sullivan
Chief Executive Officer

Prepared by**:** Nat Bottigheimer and Paul Ceppi

Attachments:
Appendix A – Proposed New Rules – Aspire Program
Appendix B – Reasonable and Appropriate Return on Investment
Appendix C – Net Benefit Analysis
Appendix D– Aspire Program Scoring Criteria
Appendix E – Green Building Standards