



53 N.J.R. 2252(a)

VOLUME 53, ISSUE 24, DECEMBER 20, 2021

SPECIAL ADOPTION

Reporter

53 N.J.R. 2252(a)

***NJ - New Jersey Register > 2021 > DECEMBER > DECEMBER 20, 2021 > SPECIAL ADOPTION
> OTHER AGENCIES -- NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY***

Agency

OTHER AGENCIES > NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Administrative Code Citation

Specially Adopted and Concurrently Proposed New Rules: N.J.A.C. 19:31-23

Text

Authority Assistance Programs

Aspire

Specially Adopted and Concurrently Proposed New Rules Authorized: November 15, 2021, by the New Jersey Economic Development Authority, Tim Sullivan, Chief Executive Officer.

Filed: November 15, 2021, as R.2021 d.143.

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

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

Concurrent Proposal Number: PRN 2021-118.

Effective Date: November 15, 2021.

Expiration Date: November 10, 2022.

Submit written comments by February 18, 2022, to:

Jacob Genovay, Senior 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 New Jersey Aspire Program Act, sections 54 through 67 of P.L. 2020, c. 156, as amended by P.L. 2021, c. 160.

The new rules became effective on November 15, 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 180 days from the date of filing, that is, until May 14, 2022.

Concurrently, the provisions of the new rules are being proposed for re-adoption in accordance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. As the NJEDA has filed this notice of re-adoption before May 14, 2022, the expiration date is extended 180 days to November 10, 2022, pursuant to N.J.S.A. 52:14B-5.1.c. The concurrently proposed new rules will become effective and permanent 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 November 10, 2022.

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

The specially adopted and concurrently proposed new rules follow:

Summary

The New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, as amended by P.L. 2021, c. 160, creates a package of tax incentive, financing, and grant programs that will address the ongoing economic impacts of the COVID-19 pandemic and build a stronger, fairer New Jersey economy.

The Aspire program supports the development of commercial, mixed use, and residential real estate projects in New Jersey by providing tax credit awards. To be eligible for such awards, a redevelopment project must:

- Demonstrate that without the incentive award, the redevelopment project is not economically feasible;
- Demonstrate that a project financing gap exists and/or the project will generate a below-market rate of return;
- Be located in a designated "incentive area";
- Include a developer who has an equity participation of at least 10 percent of the total cost in limited instances, and at least 20 percent of the total cost for the majority of Aspire projects;
- Result in a net positive economic benefit to the State for commercial projects; and
- Meet specific minimum project cost thresholds for residential projects, depending on where the project is located.

For all projects, the Authority is setting the maximum amount of time allowable for the eligibility period to 10 years. The Aspire program awards are calculated based upon a percentage of total project costs, with actual percentages dependent on the location of the project and whether the project is commercial or residential. The proposed rules also limit project costs that are allowable. For example, project "soft costs" are limited to 20 percent of the project costs, and costs eligible for spending on Community Benefits Agreements are limited to five percent of project costs. These caps are not limitations on what may be spent on a project and projects that exceed these limits will

remain eligible for program support. Instead, costs that are above these ceilings will be excluded from the calculation of the Aspire tax credit awards.

Tax credit awards for every project under the Aspire program will be subject to caps-in terms of tax credit award amount and in terms of percent of total project costs. Tax credit awards for Aspire projects will be capped at \$ 42 million for most projects and \$ 60 million for certain projects in targeted areas or those utilizing tax credits under the Federal Low-Income Housing Tax Credit Program. Project awards will also be capped at 45 percent of development costs for most projects, 50 percent of development costs for commercial projects in targeted areas, and 60 percent for new construction projects that also utilize tax credits under the Federal Low-Income Housing Tax Credit (LIHTC) Program administered by the New Jersey Housing and Mortgage Finance Agency (HMFA). Therefore, the Aspire program is an additional financial resource of tax credits that is available for developers in addition to HMFA's LIHTC Program, with a limit on the amount of the Aspire tax credit available that is based on the sum of the low-income housing and Aspire program tax credits in relation to the project cost.

The Aspire program includes a number of fiscal and community protections, including a requirement for each applicant to demonstrate local support for their proposed project by providing a letter of support from the governing body of the municipality in which the project will be located; and by entering into a community benefits agreement or a redevelopment agreement with the municipality in which the project will be located, if the total project cost equals or exceeds \$ 10 million.

As part of eligibility for the Aspire program, residential projects must meet minimum project cost thresholds, based on the population of the municipality where the project is located. The thresholds are:

Qualified Incentive Tract	\$ 5 million
Government Restricted Municipality	\$ 5 million
Municipal Population < 200,000	\$10 million
Municipal Population > 200,000	\$17.5 million

Additionally, the Aspire Act provides for another category of redevelopment projects that may be either residential or commercial projects, which are referred to as "transformative projects." Such projects must meet certain significant criteria and, if they do, may receive tax credit awards up to \$ 350 million or 40 percent of project cost, with a total program cap of \$ 2.5 billion in tax credit awards. No more than two transformative project awards can be made within a single municipality. Projects that are primarily final point of sale retail are not eligible for transformative project awards.

The following paragraphs summarize the contents of each section of the new rules implementing the Aspire program:

N.J.A.C. 19:31-23.1, Applicability and scope. This section addresses the statutory authority for the Aspire program and summarizes the scope and purpose of the program, which is to support redevelopment projects in target geographies that have certain project financing gaps by providing tax credit awards that developers can use to fill the identified financing gaps, pursuant to sections 54 through 67 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-322 through 34:1B-335), as amended by P.L. 2021, c. 160.

N.J.A.C. 19:31-23.2, Definitions. This section defines certain terms used in this subchapter and incorporates terms defined at P.L. 2020, c. 156, pertaining to the program. Specifically, this section clarifies statutory terms to support the implementation of the program, such as "agency," "Authority," "aviation district," "Board," "building services," "cash flow," "commercial project," "'developer' or 'applicant,'" "Director," "distressed municipality," "economic development incentive," "eligibility period," "food delivery source," "government-restricted municipality," "health care or health services center," "incentive area," "incentive award," "incentive award agreement," "low-income housing," "major rail station," "minimum environmental and sustainability standards," "moderate-income housing," "Municipal Revitalization Index," "port district," "program," "'project cost' or 'total project cost,'" "project financing gap,"

"redevelopment project," "qualified incentive tract," "residential project," "SDA district," "SDA municipality," "transit hub," and "vacant commercial building."

This section also creates additional terms to support the implementation of the program, including "Act," "affiliate," "co-applicant," "community benefits agreement," "developer contributed capital," "enhanced area," "equity," "film production project," "fiscal impact analysis," "full-time employee at the redevelopment project," "hospitality establishment," "incentive phase agreement," "labor harmony agreement," "mixed use residential project," "reasonable and appropriate return on investment" or "reasonable and appropriate rate of return on investment," "soft costs," "square feet," "total development cost," or "total redevelopment cost," and "workforce housing."

The rules combine the definition of "project cost" and "total project cost." While the Act defined the two terms separately, the Act uses them interchangeably to mean the costs of the projects that are eligible as the basis to calculate the amount of tax credits. To refer to the total costs-ineligible and eligible-of the project, the rules introduce the new term "total development cost" (and "total redevelopment cost" as an alternative term with the same meaning).

N.J.A.C. 19:31-23.3 Eligibility criteria. This section outlines the criteria that a developer, and a co-applicant, if applicable, must meet at the time of application for an application to be eligible for an incentive award of tax credits as reimbursement for all, or a portion, of the project financing gap of a redevelopment project.

The developer is required to show, at the time of application, that the redevelopment project, among other factors, is not economically feasible without the incentive award and will be economically and commercially viable for the duration of the eligibility period; that a project financing gap exists (which includes a determination by the Authority that the project will generate a reasonable and appropriate return on investment); and that, with the exception of a redevelopment project that is predominantly infrastructure used for film production, the project is located in a targeted incentive area.

The program eligibility criteria also require an applicant to show that the overall public assistance needed to fill the project financing gap and enable the project to go forward will result in a net positive economic benefit to the State. However, the requirement to show a net positive economic benefit will not be applicable for: a residential project; a food delivery source; or a health care or health services center with at least 10,000 square feet of space that is devoted to health care or health services and that is located in a municipality with a Municipal Revitalization Index distress score of at least 50 lacking adequate access, as determined by the Commissioner of the Department of Health.

The developer applicant is also required to show that the amount of its contributed capital, or equity, totals at least 20 percent of the total development cost, or at least 10 percent of the total development cost for a redevelopment project that is located in a government-restricted municipality. As provided in the definition of "equity," satisfaction of developer-contributed equity requirements for Low-Income Housing Tax Credit (LIHTC) financed projects differs from projects financed by other means. For LIHTC-supported projects, the Authority will follow rules and procedures established by the Housing and Mortgage Finance Agency for deferred developer fees. Additionally, the proceeds from the monetization of LIHTC and other Federal or local tax credits will be counted as developer-contributed equity. However, proceeds from redevelopment area bonds will not to be counted towards the developer-contributed equity.

The developer also must show that it has complied with the requirements for tax filing and information returns, payment, or remittance of State taxes and fees, which is evidenced by submitting a tax clearance certificate. The developer, all principals of the developer, and any entity with common principals as the developer, must also demonstrate not being in arrears of more than 24 months of any financing obligation for the project at the time of application.

With the exception of demolition and site remediation activities, the developer must demonstrate that no construction has commenced at the redevelopment project site prior to application submission, unless the Authority determines that the redevelopment project would not be completed otherwise. Further, where the redevelopment

project will be undertaken in phases, the incentive award will be limited to only the phases where the construction has not yet begun. The inclusion of those costs incurred prior to application as project costs is limited to those undertaken within two years of application. However, exceptions are provided during the initial two years of the program, to account for work stoppages that likely resulted from the COVID-19 pandemic.

To qualify for an incentive award, a residential project must have a total project cost of at least \$ 17,500,000, if the project is located in a municipality with a population greater than 200,000 or of at least \$ 10,000,000, if the project is located in a municipality with a population less than 200,000 according to the latest Federal decennial census. If the project is in a qualified incentive tract or government-restricted municipality, then the residential project must have a total project cost of at least \$ 5,000,000.

A redevelopment project must be completed, and the developer must be issued a temporary certificate of occupancy for the redevelopment project facilities by the applicable enforcing agency, within four years of executing the incentive award agreement, or where the redevelopment project has a project cost in excess of \$ 50,000,000, in accordance with the incentive phase agreement corresponding to the redevelopment project. For a redevelopment project with a project cost in excess of \$ 50,000,000 and authorized to be completed in phases, the Authority has the discretion to allow up to six years from the date on which the incentive award agreement is executed to be issued a temporary certificate of occupancy by the applicable enforcement agency, provided that each phase, except for the last phase, shall be \$ 50,000,000 or more.

The eligibility criteria also require that a redevelopment project meet minimum environmental and sustainability standards, comply with the Authority's affirmative action requirements, and pay prevailing wages to construction workers and building service workers. The developer is also required to certify that any contractors or subcontractors employed will be registered as required by the Public Works Contractor Registration Act, will not have been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and will possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury.

Finally, for a residential project or redevelopment project consisting of newly constructed residential units, the developer is required to reserve at least 20 percent of the residential units for occupancy by low- and moderate-income households with affordability controls as required pursuant to the Fair Housing Act, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.). If a project consists solely of rehabilitating or renovating existing units, with no change to the composition of units or creation of new units, the 20 percent reservation is not a requirement.

N.J.A.C. 19:31-23.4 Application submission requirements. This section establishes the information needed and procedures required for submitting an application to the Authority for tax credits under the program, including certain certifications pertaining to net positive economic benefit.

Materials required at application includes: basic details about the developer's, and any co-applicant's, business; a copy of a tax clearance certificate; information on the developer's, and any co-applicant's, relationships and good standing status (as defined by each department) with the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury; information about pending legal matters and a completed legal questionnaire; and details on any other development-related subsidies received by the developer for the project.

The applicant will also be required to provide information about the proposed project, including: a description of the project, with a breakdown of uses and related square footage and costs; the developer's experience with similar project(s); the anticipated project construction schedule; certification that the project meets the requirements to reserve residential units as set forth at N.J.A.C. 19:31-23.3(d); certification that any contractors or subcontractors that will perform work at the redevelopment project are registered, have not been debarred by Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury; employment projections at the redevelopment project; status of site control status for the entire redevelopment project site; list and status of all required State and Federal permits that have , or will be, required to be issued, as well as all required local

planning and zoning board approvals, for the redevelopment project; description of how certain minimum environmental and sustainability standards are to be incorporated to reduce environmental degradation and encourage long-term cost reduction; a copy of a market and/or feasibility study for the proposed use of the project site that is prepared by an independent third-party, which must include the firm's judgement regarding the marketability and underwriting of the revenue and expense components of the proposed project for the duration of the eligibility period; and information required by the Authority to evaluate and determine the application's score pursuant to N.J.A.C. 19:31-23.7(c). The developer must also submit project financial information including, but not limited to, estimated project costs and total development costs, any State or local financial assistance for the project, proposed financing terms, projected internal rate of return on developer's contributed capital, net margin, and cash on cash yield; a certification from the chief executive officer or equivalent officer that additional capital cannot be raised from other sources after making all good faith efforts; and any other documentation demonstrating economic and commercial viability pursuant to N.J.A.C. 19:31-23.3(a)2.

If the applicant is applying with a co-applicant, the application shall also include certain information pertaining to the co-applicant, including: a list of all of the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury permits and approvals or obligations and responsibilities, with which the co-applicant is associated, or has an interest in; a completed legal questionnaire disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules; a list of all the development subsidies that the co-applicant is requesting or receiving for the redevelopment project, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received; organizing documents of the co-applicant and a narrative regarding the activity of the co-applicant generally, and in the State and municipality; a description of the long-term participation agreement between the co-applicant and the developer regarding the redevelopment project; and an explanation of the need for a co-applicant to receive and sell the tax credits to finance the redevelopment project.

For a redevelopment project with total project cost of \$ 10 million or more and for which a community benefits agreement is required pursuant to N.J.A.C. 19:31-23.8(e), the developer shall provide a letter of support from the chief executive of the municipality or county acknowledging the requirement for a community benefits agreement for the redevelopment project and affirming that the municipality or county shall proceed to negotiate a community benefits agreement in good faith with the developer and execute the community benefits agreement within the time required by N.J.A.C. 19:31-23.8(e)3.

For all projects, regardless of total project cost, the developer must submit with the application a letter of support for the project from the governing body of the municipality or municipalities in which the project is located.

The Authority may consider two or more applications as one application for one redevelopment project based on certain factors including the location of the redevelopment projects, the types of uses proposed, and the developer's financing and operational plans.

For any aspect relating to applicant and project eligibility, the Authority may require an applicant to submit any other necessary and relevant information, including that which is needed to complete the financial review and developer capacity.

Finally, if a developer needs to amend its application, then the developer, or chief executive officer, or equivalent officer of the developer, shall certify to the Authority that the information provided in its amended application is true under the penalty of perjury.

N.J.A.C. 19:31-23.5 Fees. This section establishes non-refundable application and other fees intended to assist the Authority in recouping the administrative costs of processing applications. Beyond application fees, the Authority sets rates for one-time approval fees; one-time issuance fees, which are paid at the point of initial certification; and annual servicing fees, which are paid for the years in which the Authority is monitoring the project; as well as fees for tax credit transfers, project modifications, and project terminations. All fees are based on the type of project and size of project cost, with larger fee levels for larger projects. In addition, costs associated with certain third-party analyses or reviews utilized to assess the application may be passed along directly to applicants.

N.J.A.C. 19:31-23.6 Financing gap and fiscal impact analysis. This section provides for the financial review of information provided by the developer, the evaluation of proposed project cost, the validation of project financing gap, and fiscal impact analysis to determine net positive economic benefit to the State.

The Authority shall review the financial information provided by the developer for the proposed redevelopment project and all phases, if applicable. The proposed total development cost will be evaluated against reasonable market costs and components of comparable projects.

The Authority shall conduct a fiscal impact analysis to determine and ensure that the overall public assistance provided to the redevelopment project will result in a net positive economic benefit to the State. Exceptions to the requirement for a net positive economic benefit are capital investment for a residential project, a capital investment for a food delivery source, or a health care or health services center with a minimum of 10,000 square feet of space devoted to health care or health services that is located in a municipality with a Municipal Revitalization Index distress score of at least 50 lacking adequate access.

The required net positive economic benefit to the State that must be demonstrated is set at 185 percent of the award of tax credits for redevelopment projects, unless the redevelopment project is located in a government-restricted municipality, in which case it is 150 percent. The time period for evaluating the net positive economic benefit is the duration of the eligibility period. Evaluation of the benefits will include consideration of direct and indirect benefits to the State, including local taxes. The Authority may also include induced benefits derived from project construction; however, such determination will be limited to the net positive economic benefit from the capital investment commenced after application submission. For calculating permanent employee wages at the redevelopment project site to be included in the evaluation of the net positive economic benefit, the Authority shall rely upon the average wages in the region in which the respective redevelopment project is located.

In addition, certification is required by the chief executive officer or equivalent officer of the developer that the submitted documents and factual assertions are true and accurate at the time of submission.

If the Authority revises the methodology used for the net positive economic benefit calculation, the Authority will apply the revised methodology prospectively to pending applications, previously approved redevelopment projects when the developer requests a modification, and previously approved redevelopment projects for which these rules or the incentive award agreement requires or authorizes a reevaluation. Additionally, the Authority shall not credit the business or person with any benefit that was previously credited to the redevelopment project.

N.J.A.C. 19:31-23.7 Approval of completed application; tax credit amounts. This section delineates the Authority's review process, which includes project eligibility review and determination by the Board that the applicant complies with the eligibility criteria, satisfies the submission requirements, and provides adequate information for the subject application.

To have an application reviewed, businesses must apply before March 1, 2027. The Authority will review complete applications in the order of their submission dates. In circumstances where interest in the program is expected to surpass available funds, the Authority may, at the Authority's discretion and upon notice, institute a competitive application process, whereby all completed applications submitted by a date certain will be evaluated as if submitted on that date.

Before approval of an application, the Authority shall confirm with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury that the developer and any co-applicant are in compliance by being in substantial good standing with the statutes, rules, and other enforceable standards of the respective department (as determined by each department). Or, if the developer or any co-applicant has a compliance issue, the developer or any co-applicant has entered into an agreement with the respective department that includes a practical corrective action plan.

Any contractors or subcontractors that will perform work at the redevelopment project shall be registered, shall not have been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and shall possess a tax clearance certificate issued by the Division of Taxation.

The Authority shall allocate incentive awards according to the redevelopment project's score and until either the available incentive awards are exhausted or all redevelopment projects obtaining the minimum score receive an incentive award, whichever occurs first (scoring shall be based on factors outlined in the section). If insufficient funding exists to fully fund all eligible projects, a project may be offered partial funding.

If a developer intends to apply to both the Authority and the New Jersey Housing and Mortgage Finance Agency (Agency) for subsidies, the developer shall notify the Agency simultaneously with any application made to the Authority. Approval of an application by the Agency shall be the final determination required for an incentive award for a residential project.

Upon completion of the capital investment and receipt of a temporary certificate of occupancy for the redevelopment project or any phase of an approved phased project, or upon any other event evidencing project completion, a developer shall be allowed a total tax credit equal to 45 percent of the total project cost, unless one of two exceptions apply. For commercial projects, the total tax credit shall be equal to 50 percent of the total project cost if the project is located in a government-restricted municipality.

For residential projects, the total tax credit shall equal 60 percent of the total project cost, if the project is new construction and receives a four-percent allocation from the Federal Low-Income Housing Tax Credit Program. The award will also be limited based on the sum of the tax credits awarded under programs administered by the Authority and the Federal Low-Income Housing Tax Credit Program. If the project has tax credits awarded under the Federal Low-Income Housing Tax Credit Program, the limit is 90 percent, otherwise, the limit is 80 percent.

The value of all tax credits approved by the Authority shall not exceed: \$ 60,000,000 per redevelopment project or phase for a residential project that is allowed a tax credit, or a redevelopment project or phase that is located in a qualified incentive tract, government-restricted municipality, or municipality with a Municipal Revitalization Index distress score of at least 50; and \$ 42,000,000 for any other redevelopment project or phase.

Finally, the amount of tax credits a developer may apply annually shall equal the total credit amount divided by the duration of eligibility period in years, fractions of a dollar rounded down.

N.J.A.C. 19:31-23.8 Approval letter; incentive award agreement. This section requires that all applicants execute an approval letter and incentive award agreement with the Authority to establish the terms and conditions and requirements for the award.

The Board shall make a determination, and upon approval, provide notification to the applicant and the Division of Taxation of the maximum amount of tax credits, and the maximum percentage of allowed tax credits for total project cost in a redevelopment project. An approval letter will set the conditions that must be met to retain the tax credits, including the Authority's requirements regarding prevailing wage requirements, affirmative action, and certifications that the proposed project does not violate any environmental law requirements, including the Flood Hazard Area Control Act Rules, and that the project incorporates the minimum environmental and sustainability standards. The approval letter, which provides the requirements necessary for the Authority to execute the incentive award agreement, will also require that a qualified residential project will be monitored to maintain the affordable units for the grant term.

The approval letter will provide the estimated completion date, and require periodic progress reports and the submission of executed financing commitments and documents that evidence site control by the developer or an affiliate.

The Authority may rescind the incentive award if the periodic progress reports are not submitted or if the progress reports demonstrate unsatisfactory progress. The Authority may allocate the unused tax credits to another applicant if the incentive award is rescinded in the same calendar year as when the award was approved. Upon receipt of the evidence of financial commitment required by the approval letter, the Authority may re-evaluate the project financing gap and reduce the size of the grant accordingly. Except for extenuating circumstances or in the Authority's sole discretion, the approval of the tax credits will expire if the developer does not submit required documentation within a year after application approval.

After the requirements for the execution of the incentive award agreement are satisfied, the Authority shall enter into an incentive award agreement with the developer and any co-applicant. The Authority's Chief Executive Officer will negotiate the terms and conditions on behalf of the State. The awarding of tax credits will be conditioned on the developer's and any co-applicant's compliance with the agreement requirements, as outlined at paragraphs (c)1 through 25.

Subsection (d) provides the circumstances requiring a labor harmony agreement for a redevelopment project, specifically between a developer or tenant that serves as the owner or operator of the retail establishment, distribution center, or hospitality establishment and a labor organization or cooperating labor organizations representing the employees. A labor harmony agreement is only required if the State has a proprietary interest in the redevelopment project. However, the labor harmony agreement may not be required if the Authority determines that the redevelopment project would not be able to go forward if the agreement is required.

Pursuant to subsection (e), for a redevelopment project whose total project cost equals or exceeds \$ 10 million, a developer and any co-applicant shall be required to also execute a community benefits agreement with the Authority and the chief executive of the municipality or the county in which the redevelopment project is located. While the Authority will not participate in negotiations between the developer and the municipality or county, the Authority will review the agreement prior to its execution. The community benefits agreement is a condition to entering into an incentive award agreement; however, a community benefits agreement will not be required 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 and the approval letter or redevelopment agreement (1) has been certified by the municipality; and (2) includes provisions that meet or exceed the standards required for a community benefits agreement. Nonetheless, the Authority does not intend to incorporate community benefit agreement standards in its approval letter, as those will need to be negotiated between the developer and municipality or the county.

The community benefits agreement may include requirements for training, employment, and youth development and free services to underserved communities in and around the community where the project is located, as well as any other program element, on the project site or in the host community, intended to improve community health, safety, access to opportunity, recreational opportunity, environmental resilience and environmental quality, quality of life, or other locally-prioritized community benefit. The community benefits agreement will include the developer's contributions; the monetary equivalent for any non-monetary contribution; an event of default if the developer forfeits tax credits in two successive years; and the date by which the community advisory committee must submit its annual report.

At least one public hearing is required prior to entering a community benefits agreement to hear testimony from residents, community groups, and other stakeholders on the community's needs that the agreement should address. The record and hearing minutes shall be an exhibit to the community benefits agreement.

The community benefits agreement shall provide for the creation of a community advisory committee to oversee the implementation of the agreement, monitor successes, and ensure compliance with the terms of the agreement.

If the annual report required to be produced by the community advisory committee indicates that the developer is not in compliance with the agreement, then a mediation process will be utilized to seek resolution, which may include mutually agreeable amendments to the community benefits agreement. If resolution is not achieved through mediation, then a hearing officer will be assigned by the Authority to conduct a review and to issue a written report to the Chief Executive Officer with findings and recommendations. Based on that review, the Chief Executive Officer shall make a determination of compliance or non-compliance. The subsection provides for the reduction of tax credits or forfeiture if the developer is not in compliance.

Subsection (f) requires the developer to submit, prior to the issuance of tax credits, but not later than six months following project completion, satisfactory evidence of actual project cost, as certified by a qualified independent certified public accountant, and evidence of a temporary certificate of occupancy, or other event evidencing project completion that begins the eligibility period indicated in the incentive award agreement. Also required is the

developer's certification that the information provided is true under the penalty of perjury. If the project cost is reduced below the relevant minimum project cost for eligibility, then the redevelopment project will no longer be eligible. If the project cost in the certification is less than the project cost in the application approval, then the Authority may re-evaluate the net positive economic benefit and reduce the size of the tax credits accordingly.

For a redevelopment project approved as a commercial project or as a residential project, the developer shall submit evidence that the project is predominantly commercial or residential, respectively. The developer shall be required to file a certification indicating whether the developer is aware of any condition, event, or act that would cause the developer not to be in compliance. Subsection (f) further outlines other specific requirements for documentary evidence relating to deed restrictions for residential units; qualification as a film production project; satisfaction of minimum environmental and sustainability standards; and modifications to the redevelopment project, as approved by the Board.

Subsection (g) provides for forfeiture of the credit amount for any tax period when the documentation remains uncertified, although credit amounts for the remainder of the years of the eligibility period shall remain available to the developer.

Pursuant to subsection (h), when the Authority accepts the certification and determines the conditions have been met, then within 90 days, the Authority will notify the developer and the Director, and the developer will receive its tax credit certificate, which will not exceed the maximum amount determined by the Board. The use of the tax credit certificate will be subject to the receipt of an annual certificate of compliance issued by the Authority.

Subsection (i) provides that, prior to the date of certification, any modification to the redevelopment project shall require review and approval by the Authority to determine that the redevelopment project as modified does not undermine the basis for the tax credit award approved.

N.J.A.C. 19:31-23.9 Reporting requirements and annual report. This section imposes annual reporting requirements on the developer during the term of the eligibility period and outlines the provisions for issuance of the annual certificate of compliance by the Authority. A developer that was approved for an incentive award and has entered into an incentive award agreement shall submit an annual report for each year of the eligibility period. The report shall include occupancy versus gross-leasable area, tenant list, evidence of continued deed restriction, rent roll, executed financing commitments, and site control documentation. It shall also include evidence that a labor harmony agreement is in place, if applicable.

The developer is required to submit separate certifications: indicating whether the developer is aware of any condition, event, or act which would cause the developer to not to be in compliance with the approval, the Act, the incentive award agreement, or community benefits agreement; stating that the project does not violate any environmental laws, including the Flood Hazard Area Control Act Rules; listing the use and occupancy of the project; and stating whether the developer is in compliance with a community benefits agreement, if applicable.

The report is required to be submitted 120 days after the end of the developer's tax privilege period. Absent extenuating circumstances and the Authority's written approval, failure to timely submit the annual report with the required information will result in forfeiture of tax credits for that privilege period. The Authority may audit any representations made, or documents submitted, in the annual report.

Upon the Authority's approval of each annual certified report, the Authority will provide to the developer and the Director of Taxation a certificate of compliance indicating the amount of tax credits that the developer may apply against its tax liability for that privilege period. If the Authority approval included a co-applicant, the Authority shall provide the certificate of compliance to the co-applicant with a notice to the developer. Thereafter, the developer and any co-applicant shall apply the credit awarded and the Director of the Division of Taxation shall prescribe the order of priority of the application of the credit and any other credits allowed.

N.J.A.C. 19:31-23.10 Reduction, forfeiture, and recapture of tax credits. This section establishes provisions for the reduction, forfeiture, and recapture of tax credits.

The section sets forth various instances in which the developer and/or any co-applicant shall forfeit all credits; and, instances in which the Authority shall reduce and/or recapture the tax credits due to certain changes in a project, or non-compliance with program requirements, including those pertaining to: labor harmony agreement pursuant to N.J.A.C. 19:31-23.8(d); occupancy of a project to less than 60 percent; payment of prevailing wage pursuant to N.J.A.C. 19:31-23.3(a)8; community benefits agreement pursuant to N.J.A.C. 19:31-23.8(e); or any material misrepresentation on the developer's application, project completion certification, annual report, or any related submissions.

In addition, if, based on new information, the Authority determines that forfeiture or recapture should have been applicable pursuant to any of the provisions in this section, the Authority shall recapture the tax credits for the relevant tax period or tax periods.

If the developer fails to provide the financial documentation required for the Authority to evaluate the reasonable and appropriate return on investment, the Authority shall recapture all of the tax credits awarded. Further, any recapture amount pursuant to the section 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 section also outlines the requirements for the developer to update certain submissions upon termination of an incentive award agreement, and for the Authority to evaluate the reasonable and appropriate return on investment as of the date of termination in the same manner as at the end of the eligibility period pursuant to N.J.A.C. 19:31-23.8(c)17.

The section provides that if all or part of a tax credit sold or assigned is subject to recapture, then the Authority shall pursue recapture from the developer and any co-applicant, to the extent the co-applicant is involved with the basis for the recapture, and not from the purchaser or assignee of the tax credit transfer certificate.

Finally, any funds recaptured pursuant to this section, including penalties and interest, shall be deposited into the General Fund of the State.

N.J.A.C. 19:31-23.11 Transformative projects. This section establishes the eligibility criteria for a transformative project.

To be a transformative project, the project must demonstrate a project financing gap and a total project cost of a minimum of \$ 100,000,000. In addition, the project square footage, exclusive of any parking component, must be either 500,000, or more, of new or substantially renovated industrial, commercial, or residential space, or 250,000, or more, of film studios, professional stages, television studios, recording studios, screening rooms, or other infrastructure for film production. A redevelopment project where more than 50 percent of the premises is occupied by one or more businesses engaged in final point of sale retail is excluded from being a transformative project.

For commercial projects, developers must also demonstrate that the project has special economic importance to the State and that the project creates modern facilities that enhance the State's competitiveness in attracting targeted industries. To do so, the developer must satisfy this requirement by meeting two criteria. Except for projects with 250,000 square feet related to film production, the first criterion is either the creation of at least 500 new full-time jobs or the substantial renovation of a vacant commercial building. The second criterion is to demonstrate that the project provides opportunities to leverage leadership in a high-priority targeted industry, for example, where the developer is making an industry leading investment in a new technology or high-growth sub-industry or catalyzing a new sub-industry or industry-cluster within the State.

For residential projects, the developer must satisfy one of three criteria to demonstrate special economic importance: location in a government-restricted municipality, enhanced area, or distressed municipality; if in any other location, inclusion of 20 percent of new residential units for low- and moderate-income households or workforce housing in addition to the 20 percent required reservation; or substantial renovation of a vacant commercial building. Additionally, the project must have a certain minimum number of new residential units

depending on project location and whether the project contains 100,000 square feet or more of retail or commercial space, excluding any parking.

All transformative projects must leverage the competitive economic development advantages of the State's mass transit assets, higher education assets, and other economic development assets. Thus, the developer must demonstrate the benefits to the project of such State assets. The developer must show that the project—which may provide a place of employment or housing—benefits from one or more such State assets, so as to attract or retain both employers and skilled workers generally, or in targeted industries. The developer can demonstrate this leveraging of assets if a third-party prepared market or feasibility study explains how the project benefits from any such State asset or if the developer has negotiated an agreement with the entity responsible for the asset that benefits the project, its tenants, or occupants.

A transformative project may be completed in phases as determined by the Authority, based upon written architectural plans and specifications that are completed before or during the physical work, certificates of occupancy, or financial and operational plans. For phased transformative projects, the developer must enter into a transformative phase agreement, which may be incorporated in the incentive award agreement, with the Authority.

The developer must be issued temporary certificates of occupancy for all phases of the transformative project facilities within eight years of executing either the incentive award agreement or the first transformative phase agreement corresponding to the transformative project. After completing each phase, the developer is required to submit a certification that the phase is completed and that includes the project cost for that phase. For any infrastructure work that is shared across multiple phases, the certification must also include the project cost of all completed infrastructure work through the date of the certification. The Authority will review the project financing gap based on the actual financing at the certification of each phase, and the Authority may resize the incremental tax credit for that phase or subsequent phases. The Authority will also re-evaluate the developer's reasonable and appropriate return on investment in the seventh year and at the end of the eligibility period for the last phase; however, the Authority may also re-evaluate the developer's reasonable and appropriate return on investment during the fifth year of any earlier phase.

For a transformative project completed in phases, each phase will have a separate eligibility period. All conditions and requirements applicable during an eligibility period will apply to the entire transformative project until the end of the eligibility period for the last phase. If the certification for any phase indicates that the project no longer qualifies as a transformative project, the developer will forfeit all tax credits for that tax period and for all subsequent tax periods.

All transformative projects with newly constructed residential units are required to reserve at least 20 percent of the new residential units for occupancy by low- and moderate-income households with affordability controls, as required pursuant to the Fair Housing Act, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.).

The Authority shall review the transformative project cost; evaluate and validate the project financing gap estimated by the developer; perform a single project financing gap analysis (across all phases); and conduct a fiscal impact analysis to ensure that the overall public assistance provided to the transformative project results in a net positive economic benefit to the State. Further, for any business or person that is considering to locate in a transformative project and is applying to receive any other incentive subsequent to an award of transformative project tax credits, the Authority will not credit that business or person with any net positive economic benefit that was previously credited to the transformative project. Projects that are predominantly residential will be excluded from the net positive economic benefit calculation.

The Authority may allow a tax credit for a developer of a transformative project to reimburse certain project financing gap costs in an amount not to exceed: 1. 40 percent of the total project cost; 2. the total value of the project financing gap; or 3. \$ 350,000,000, whichever is less. For a phased transformative project, the \$ 350,000,000 limitation on incentive awards will apply to the total aggregate award for all phases of the transformative project.

Finally, the approval letter will include conditions that must be satisfied for each phase for a transformative project. The developer is required to submit progress reports for each phase that has not yet been certified until certification of the last phase.

N.J.A.C. 19:31-23.12 Application for tax credit transfer certificate. This section allows a developer or co-applicant that is a holder of a credit, upon application to, and approval by, the Division of Taxation in the Department of the Treasury and the Chief Executive Officer of the Authority, to sell its credit, covering one or more years, under the tax credit transfer certificate program for consideration received by the business of not less than 85 percent of the transferred credit amount, provided that in instances where the project is constructing new residential units, this consideration may be no less than 75 percent; and for such projects utilizing Low-Income Housing Tax Credits, this consideration may be no less than 65 percent.

N.J.A.C. 19:31-23.13 Assignment of rights of incentive award agreement. This section outlines the process for a developer or co-applicant to pledge, assign, transfer, or sell any or all of its rights, title, and interest in, and to, the incentive award agreement and in the incentive awards payable, along with the rights and remedies. In determining whether to consent to the developer's assignment, the Authority and State Treasurer will consider the purchase price and terms of the pledge, assignment, transfer or sale, the amount of the purchase price allocated to the tax credit rather than to the project, and how the transaction-and the transfer of the project to a new entity-impacts the reasonable and appropriate return on investment that must be calculated for the project based on a single developer. Any assignment will be absolute for all purposes, including the Federal bankruptcy code. Finally, the section outlines the scope, validity, and lien of the pledge, and requires, as a condition of any incentive grant, that the notice be filed with the clerk of the county in which the project is located. The Authority shall publish on its website, information concerning each approved pledge, assignment, transfer, or sale approved.

N.J.A.C. 19:31-23.14 Affirmative action and prevailing wage. This section provides that the Authority's affirmative action requirements at P.L. 1979, c. 203 (N.J.S.A. 34:1B-5.4) and N.J.A.C. 19:30-3 shall apply to the redevelopment project. This includes, but is not limited to, construction work that the developer may include in project costs pursuant to this subchapter and that is performed prior to the application, such as demolition and site remediation, provided that such work occurs after November 15, 2021, the effective date of the subchapter. The affirmative action requirements shall apply for two years after the first certificate of compliance is issued. In addition, the Authority's prevailing wage requirements at P.L. 2007, c. 24 (N.J.S.A. 34:1B-5.1), N.J.A.C. 19:30-3, and 19:31-23.3(a)8 shall apply to the redevelopment project, including, but not limited to, construction work listed at paragraphs (b)1, 2, or 3. Finally, during the eligibility period, prevailing wage shall apply to building services at the site of the redevelopment project pursuant to N.J.A.C. 19:31-23.3(a)8.

N.J.A.C. 19:31-23.15 Appeals. This section outlines the requirements for an applicant to appeal an action of the NJEDA Board and the process by which the Authority shall consider each appeal in a timely manner.

N.J.A.C. 19:31-23.16 Reports on implementation of program. This section details the provisions at P.L. 2020, c. 156, establishing requirements for an initial report in 2022, and subsequent biennial reports on the implementation of the program. The reports described in this section must be prepared by a State college or university in conjunction with the Authority. The Authority must also provide a written response to the report, which, together with the report, will be submitted to the Governor and the Legislature.

N.J.A.C. 19:31-23.17 Severability. This section states that if any portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of the subchapter are severable and shall not be affected by that determination.

Social Impact

The proposed new rules, which establish the Aspire program to encourage real estate development and private investment into communities across New Jersey, with a focus on low-income and under resourced communities, are intended to have a positive social impact.

The Aspire program is a key component of the State's broader economic development plan, which balances economic impact, for example, stimulating community development, with a focus on increasing equity and opportunity for all. This strategy is clearly demonstrated in the Economic Recovery Act of 2020's overall approach, which establishes or amends 15 different programs with varying development objectives. The Aspire program is primarily focused on community development. Other programs are primarily focused on areas such as job creation and retention, small and micro business support, and other critical social issues, such as food security.

Catalyzing redevelopment projects and attracting long-term private investment into the State helps bolster long-term tax revenues and revitalizes cities and downtowns into more vibrant magnets for people and investment-rich with cultural amenities and safe, vibrant, walkable, mixed-use neighborhoods.

Economic Impact

The proposed new rules are intended to bolster the State's economy by stimulating new high-quality economic development. The Aspire program, the primary community development tool in the New Jersey Economic Recovery Act of 2020, encourages smart, targeted investments in communities in the form of private capital investment that is, by definition, a durable and sustainable investment in the State's economic infrastructure. The resulting investments will support long-term economic benefits after tax credits have been fully utilized, in the form of job creation opportunities, transit-oriented development, and affordable and workforce housing, even if a given project does not meet its full potential. The proposed new rules require that only projects that will provide the State a long-term net positive economic benefit can participate in the Aspire program. Additionally, the fact that capital investment must be completed before tax credits are provided to approved projects, along with robust recapture and repayment provisions if the projects fail to meet their long term obligations, ensures substantial economic protections within the program.

Federal Standards Statement

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

Jobs Impact

With the core focus of encouraging private investment in redevelopment projects, the Aspire program will also result in job creation needed to support projects approved thereunder. This includes the creation of union jobs needed to perform construction services on the redevelopment project, as well as permanent full-time jobs tied to the completed project, particularly for commercial and mixed-use projects. The Economic Recovery Act of 2020 creates a shared program cap between the Emerge program and the Aspire program of \$ 1.1 billion per year; however, actual cap usage will primarily be driven by the volume of approved applicants. Prior to implementation, it is not possible to accurately forecast the number of jobs that will be supported by the Aspire program; however, the Act and the proposed new rules provide a series of transparency measures, including biannual program evaluation reports, to ensure regular reporting of the number of jobs created.

Agriculture Industry Impact

The proposed new rules may have a positive impact on the agricultural industry, which includes aquaculture and fisheries, through the targeted industry inclusion of the non-retail food and beverages industry. Specifically, a transformative project may be within the agricultural industry through involvement with research and development activities that advance agricultural food innovation technologies. As a result, new or advanced technologies may benefit the State's agricultural industry operations for the production, processing, preservation, and distribution of raw agricultural goods into consumer food products.

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. Any requirements are discussed

in the Summary above; however, any costs will be minimal and fully offset by the amount of financial assistance received. The proposed fees for the program are intended to ensure a source of necessary administrative fee revenue for NJEDA to more fully cover the costs of the program and are discussed in the Summary above. The proposed new rules provide new features that allow approved applicants to use third-party, independent certified public accounting firms to support the tax credit certification process. This change is meant to improve regulatory compliance processes for all businesses and the Authority.

Housing Affordability Impact Analysis

The proposed new rules may have an impact on the affordability of housing in the State by helping to catalyze the development of market-rate housing in distressed communities and, where appropriate, mixed-income and affordable housing; however, the new rules should not impact the average costs of housing in the State. Under Aspire, a project may qualify for 60 percent of the total project cost for the new construction of a residential project that receives a four-percent allocation from the Federal Low-Income Housing Tax Credit Program administered by the New Jersey Housing and Mortgage Finance Agency. These residential projects supported through Aspire are expected to impact the amount or cost of housing units, primarily including multi-family rental housing in the State.

Smart Growth Development Impact Analysis

The proposed new rules, which authorize tax credit awards for certain residential projects, may result in an indeterminate increase in the number of housing units or result in an increase or decrease in the average cost of housing in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The proposed 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 23. ASPIRE

19:31-23.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement the provisions of the New Jersey Economic Recovery Act of 2020 establishing the New Jersey Aspire Program Act (Act), sections 54 through 67 of P.L. 2020, c. 156, as amended by P.L. 2021, c. 160. Under the Act, the Authority shall administer the program to encourage redevelopment projects through the provision of tax credit awards to reimburse developers for certain project financing gap costs. The Authority Board may approve the award of a tax credit award to a developer upon application to the Authority pursuant to sections 58 and 59 of P.L. 2020, c. 156. The value of all tax credits approved by the Authority pursuant to the Act shall be subject to the limitations set forth at section 98 of P.L. 2020, c. 156.

19:31-23.2 Definitions

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

"Act" means the New Jersey Aspire Program Act, sections 54 through 67 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-322 through 34:1B-335), as amended by P.L. 2021, c. 160.

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by, the developer. Control exists in all cases in which the entity is a member of a controlled group of corporations, as defined pursuant to section 1563 of the Internal Revenue Code of 1986 (26 U.S.C. § 1563), or the entity is an

organization in a group of organizations under common control, as defined pursuant to subsection (c) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. § 414).

"Agency" means the New Jersey Housing and Mortgage Finance Agency established pursuant to P.L. 1983, c. 530 (N.J.S.A. 55:14K-1 et seq.).

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

"Aviation district" means all areas within the boundaries of the Atlantic City International Airport, established pursuant to section 24 of P.L. 1991, c. 252 (N.J.S.A. 27:25A-24), and the Federal Aviation Administration William J. Hughes Technical Center and the area within a one-mile radius of the outermost boundary of the Atlantic City International Airport and the Federal Aviation Administration William J. Hughes Technical Center.

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

"Building services" means any cleaning or routine building maintenance work, including, but not limited to, sweeping, vacuuming, floor cleaning, cleaning of rest rooms, collecting refuse or trash, window cleaning, securing, patrolling, or other work in connection with the care or securing of an existing building, including services typically provided by a door-attendant or concierge. Building services shall not include any skilled maintenance work, professional services, or other public work for which a contractor is required to pay the prevailing wage as defined at section 2 of P.L. 1963, c. 150 (N.J.S.A. 34:11-56.26).

"Cash flow" means the profit or loss that an investment property earns from rent, deposits, and other fees after financial obligations, such as debt, maintenance, government payments, and other expenses, have been paid. Cash flow shall include costs for benefits and services provided under the community benefits agreement during the eligibility period, subject to the limitations at N.J.A.C. 19:31-23.8(e)9. For purposes of cash flow, government payments shall not include, among other things, payments that are the result of a violation or a settlement of a violation or any payment that is not reasonable and customary, as determined by the Authority.

"Co-applicant" means an entity that:

1. Is non-profit for taxation purposes under the provisions of Section 501(c)3 of the Internal Revenue Code;
2. Contributes capital, real property, or services related to the project that directly affect and serve the anticipated residents, tenants, or customers of the tenants of the redevelopment project; and
3. Enters into a participation agreement with the developer that specifies the co-applicant's participation in the redevelopment project.

"Commercial project" means a redevelopment project that is predominantly commercial and contains 100,000 or more square feet of office and retail space, industrial space, or film studios, professional stages, television studios, recording studios, screening rooms, or other infrastructure for film production, for purchase or lease. A commercial project may include a parking component, provided that the square footage for the parking component shall not count toward the required minimum square feet and when determining if a project is a commercial or residential project, a parking component shall not constitute either a residential or commercial use.

"Community benefits agreement" means the agreement between the developer; a co-applicant, if applicable; the municipality or county; and the Authority, pursuant to N.J.A.C. 19:31-23.8(i).

"Developer" or "applicant" means a person who enters, or proposes to enter, into an incentive award agreement pursuant to the provisions of section 60 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-328), including, but not limited to, a lender that completes a redevelopment project, operates a redevelopment project, or completes and operates a redevelopment project.

"Developer contributed capital" means equity contributed by the developer.

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Distressed municipality" means a municipality that is qualified to receive assistance pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.), a municipality under the supervision of the Local Finance Board pursuant to the provisions of the Local Government Supervision Act (1947), P.L. 1947, c. 151 (N.J.S.A. 52:27BB-1 et seq.), a municipality identified by the Director of the Division of Local Government Services in the Department of Community Affairs to be facing serious fiscal distress, an SDA municipality, or a municipality in which a major rail station is located.

"Economic development incentive" means a financial incentive, awarded by the Authority, or agreed to between the Authority and a business or person, 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.

"Eligibility period" means the period of 10 years for an incentive award agreement during which a developer or a co-applicant, if applicable, may claim a tax credit under the program.

"Enhanced area" means a municipality that contains an urban transit hub, as defined in section 2 at P.L. 2007, c. 346 (N.J.S.A. 34:1B-208); the five municipalities with the highest poverty rates according to the 2017 Municipal Revitalization Index; and the three municipalities with the highest percentage of SNAP recipients according to the 2017 Municipal Revitalization Index.

"Equity" means developer-contributed capital that may consist of cash, deferred development fees, costs for project feasibility incurred within the 12 months prior to application, property value less any mortgages when the developer owns the project site, and any other investment by the developer in the project deemed acceptable by the Authority. Property value shall be valued at the lesser of: the purchase price, provided the property was purchased pursuant to an arm's length transaction within 12 months of application; or the value as determined by a current appraisal acceptable to the Authority. Equity shall include Federal or local grants and proceeds from the sale of Federal or local tax credits, including, but not limited to, the Historic Rehabilitation Tax Credit, 26 U.S.C. § 47, Low-Income Housing Credit, 26 U.S.C. § 42, and New Market Tax Credit, 26 U.S.C. § 45D. Equity shall not include State grants or tax credits or proceeds from redevelopment area bonds. For a residential project utilizing Low-Income Housing Tax Credits awarded by the New Jersey Housing and Mortgage Financing Agency, equity includes the portion of the developer's fee that is deferred for a minimum of five years.

"Film production project" means a commercial project that is predominantly a film studio, professional stage, television studio, recording studio, screening room, or other infrastructure used for film production.

"Fiscal impact analysis" means the analysis to be undertaken by the Authority to determine if the project meets the requirement of providing a net positive economic benefit to the State.

"Food delivery source" means access to nutritious foods, such as fresh fruits and vegetables, through grocery operators, including, but not limited to, a full-service supermarket or grocery store, and other healthy food retailers of at least 16,000 square feet, including, but not limited to, a prepared food establishment selling primarily nutritious ready-to-serve meals.

"Full-time employee at the redevelopment project" means a full-time employee whose primary office is at the redevelopment project and who spends at least 60 percent of his or her time at the redevelopment project, or who spends any other period of time generally accepted by custom or practice as full-time employment at the redevelopment project, as determined by the Authority.

"Government-restricted municipality" means a municipality in this State with a municipal revitalization index distress score of at least 75, that met the criteria for designation as an urban aid municipality in the 2019 State fiscal year, and that, on the effective date of P.L. 2020, c. 156 (N.J.S.A. 34:1B-269 et seq.), is subject to financial

restrictions imposed pursuant to the Municipal Stabilization and Recovery Act, P.L. 2016, c. 4 (N.J.S.A. 52:27BBBB-1 et seq.), or is restricted in its ability to levy property taxes on property in that municipality as a result of the State of New Jersey owning or controlling property representing at least 25 percent of the total land area of the municipality or as a result of the Federal government of the United States owning or controlling at least 50 acres of the total land area of the municipality, which is dedicated as a national natural landmark.

"Health care or health services center" means an establishment where patients are admitted for examination and treatment by one or more physicians, dentists, psychologists, or other medical practitioners.

"Hospitality establishment" means a hotel, motel, or any business, however organized, that sells food, beverages, or both, with seating for consumption by patrons on the premises.

"Incentive area" means an aviation district, a port district, or area designated pursuant to the State Planning Act, P.L. 1985, c. 398 (N.J.S.A. 52:18A-196 et seq.), as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or a Designated Center, provided an area designated as Planning Area 2 (Suburban) or a Designated Center shall be located within a one-half mile radius of the mid-point, with bicycle and pedestrian connectivity, of a New Jersey Transit Corporation, Port Authority Transit Corporation, or Port Authority Trans-Hudson Corporation rail, bus, or ferry station, including all light rail stations, or a high frequency bus stop, as certified by the New Jersey Transit Corporation.

"Incentive award" means an award of tax credits to a developer or a co-applicant, if applicable, to reimburse a developer for all or a portion of the project financing gap of a redevelopment project pursuant to the provisions of sections 54 through 67 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-322 through 34:1B-335).

"Incentive award agreement" means the contract executed between a developer, any co-applicant, if applicable, and the Authority pursuant to section 60 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-328), which sets forth the terms and conditions under which the developer and any co-applicant may receive the incentive awards authorized pursuant to the provisions of sections 54 through 67 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-322 through 34:1B-335).

"Incentive phase agreement" means, for a phased project, the capital investment requirements and the time periods in which each phase of the project shall be commenced and completed. The incentive phase agreement may be incorporated in the incentive award agreement.

"Labor harmony agreement" means an agreement between a business that serves as the owner or operator of a retail establishment or distribution center and one or more labor organizations, which requires, for the duration of the agreement: that any participating labor organization and its members agree to refrain from picketing, work stoppages, boycotts, or other economic interference against the business; and that the business agrees to maintain a neutral posture with respect to efforts of any participating labor organization to represent employees at an establishment or other unit in the retail establishment or distribution center, agrees to permit the labor organization to have access to the employees, and agrees to guarantee to the labor organization the right to obtain recognition as the exclusive collective bargaining representatives of the employees in an establishment or unit at the retail establishment or distribution center by demonstrating to the New Jersey State Board of Mediation, Division of Private Employment Dispute Settlement, or a mutually agreed-upon, neutral, third-party, that a majority of workers in the unit have shown their preference for the labor organization to be their representative by signing authorization cards indicating that preference. The labor organization or organizations shall be from a list of labor organizations that have requested to be on the list and that the Commissioner of Labor and Workforce Development has determined represent substantial numbers of retail or distribution center employees in the State.

"Low-income housing" means housing affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 50 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

"Major rail station" means a railroad station that is located within a qualified incentive area and that provides to the public access to a minimum of six rail passenger service lines operated by the New Jersey Transit Corporation.

"Minimum environmental and sustainability standards" means the standards established by the Authority, in accordance with the green building manual prepared by the Commissioner of the Department of Community Affairs pursuant to section 1 at P.L. 2007, c. 132 (N.J.S.A. 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 Authority shall publish these standards on its website.

"Mixed-use residential project" means a residential project with less than 1,000 units that qualifies as a transformative project.

"Moderate-income housing" means housing affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to more than 50 percent, but less than 80 percent, of the median gross household income for households of the same size within the housing region in which the housing is located.

"Municipal Revitalization Index" means the index created by the Department of Community Affairs ranking New Jersey's municipalities according to eight separate indicators that measure diverse aspects of social, economic, physical, and fiscal conditions in each locality.

"Port district" means the portions of a qualified incentive area that are located within: the Port of New York District of the Port Authority of New York and New Jersey, as defined at Article II of the Compact Between the States of New York and New Jersey of 1921; or a 15-mile radius of the outermost boundary of each marine terminal facility established, acquired, constructed, rehabilitated, or improved in the South Jersey Port District established pursuant to the South Jersey Port Corporation Act, P.L. 1968, c. 60 (N.J.S.A. 12:11A-1 et seq.).

"Program" means the New Jersey Aspire Program established by section 56 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-324).

"Project cost" or "total project cost" means the sum of the costs incurred in connection with a redevelopment project by a developer until the earlier of the issuance of a permanent certificate of occupancy and the certification of costs pursuant to N.J.S.A. 19:23-8(f), or until such other time specified by the Authority, based upon such other documentation evidencing project completion as set forth in the incentive award agreement, for a specific investment or improvement, including the costs relating to lands, buildings, improvements, real or personal property, or any interest therein, including leases discounted to present value, including lands under water, riparian rights, space rights, and air rights acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated, or improved, any environmental remediation costs, plus soft costs of an amount not to exceed 20 percent of the total project costs, and the cost of infrastructure improvements, including ancillary infrastructure projects. Project cost shall not include the cost of acquiring land. Project cost shall include otherwise qualifying costs incurred by an affiliate of the developer. The fees paid by the developer or any co-applicant to the Authority associated with the application or administration of an incentive award pursuant to sections 54 through 67 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-322 through 34:1B-335) shall not constitute a project cost.

"Project financing gap" means the 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, including, but not limited to, developer-contributed capital, which shall not be less than 20 percent of the total development cost, and investor or financial entity capital or loans for which the developer, after making all good faith efforts to raise additional capital, certifies that additional capital cannot be raised from other sources on a non-recourse basis; provided, however, that for a redevelopment project located in a government-restricted municipality, the developer-contributed capital shall not be less than 10 percent of the total development cost.

"Qualified incentive tract" means a population census tract having a poverty rate of 20 percent or more; or a census tract in which the median family income for the census tract does not exceed 80 percent of the greater of the Statewide median family income or the median family income of the metropolitan statistical area in which the census tract is situated.

"Reasonable and appropriate return on investment" or "reasonable and appropriate rate of return on investment" means the discount rate at which the present value of the future cash flows of an investment equal the cost of the investment. For a residential project utilizing Federal tax credits under the Low-Income Housing Tax Credit Program awarded by the New Jersey Housing and Mortgage Finance Agency, the reasonable and appropriate return on investment shall be based on the approval of deferred developer fees pursuant to N.J.A.C. 5:80-33. For purposes of the analysis of the reasonable and appropriate return on investment, an investment shall not include any Federal, State, or local tax credits.

"Redevelopment project" means a specific construction project or improvement or phase of a project or improvement undertaken by a developer, owner, or tenant, or both, and any ancillary infrastructure project. A redevelopment project may involve construction or improvement upon lands, buildings, improvements, or real and personal property, or any interest therein, including lands under water, riparian rights, space rights, and air rights, acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated, or improved.

"Residential project" means a redevelopment project that is predominantly residential, intended for multi-family residency, and may include a parking component. When determining if a project is a residential or commercial project, a parking component shall not constitute either a residential or commercial use.

"SDA district" means an SDA district as defined in section 3 at P.L. 2000, c. 72 (N.J.S.A. 18A:7G-3).

"SDA municipality" means a municipality in which an SDA district is situated.

"Soft costs" means costs not directly related to construction, including capitalized interest paid to third parties, real estate taxes, utility connection fees, accounting, title/bond insurance, fixtures/equipment with a useful life of five years or less, affordable housing fees, and 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. The term does not include early lease termination costs, air fare, mileage, tolls, gas, meals, packing material, marketing and advertising, temporary signage, incentive consultant fees, Authority fees, loan interest payments on permanent financing, escrows, reserves, pre-opening costs, commissions and fees to the developer, project management, or other similar costs. Soft costs shall include costs for benefits and services provided under the community benefits agreement that are not directly related to construction of the project, subject to the limitations at N.J.A.C. 19:31-23.8(e)9.

"Square feet" means the sum of all areas on all floors of a building included within the outside faces of its exterior walls, including all vertical penetration areas for circulation and shaft areas that connect one floor to another, but disregarding cornices, pilasters, buttresses, and similar structures that extend beyond the wall faces.

"Total development cost" or "total redevelopment cost" means any and all costs incurred for and in connection with the redevelopment project by the developer and any affiliate of the developer until the issuance of a permanent certificate of occupancy, or upon such other event evidencing project completion as set forth in the incentive grant agreement, which shall include, but is not limited, to project costs, soft costs, and cost of acquisition of land and buildings.

"Transit hub" means an urban transit hub, as defined in section 2 at P.L. 2007, c. 346 (N.J.S.A. 34:1B-208), that is located within an eligible municipality, as defined in section 2 at P.L. 2007, c. 346 (N.J.S.A. 34:1B-208) and also located within a qualified incentive area.

"Vacant commercial building" means any commercial building or complex of commercial buildings having over 400,000 square feet of office, laboratory, or industrial space that is more than 70 percent unleased and unoccupied for a period of over one year at the time of application to the Authority, except that the amount of square feet in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties shall be 200,000.

"Workforce housing" means housing that is affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs, and occupied or reserved for occupancy by households with a gross household income of more than 80 percent, but less than 120 percent, of

the median gross household income for households of the same size within the housing region in which the housing is located.

19:31-23.3 Eligibility criteria

(a) Prior to March 1, 2027, a developer and co-applicant, if applicable, shall be eligible to receive an incentive award for a redevelopment project only if the developer demonstrates to the Authority at the time of application that:

1. Without the incentive award, the redevelopment project is not economically feasible;
2. With the incentive award, the redevelopment project will be economically and commercially viable for the duration of the eligibility period;
3. A project financing gap, which includes consideration of the project's reasonable and appropriate return on investment, exists, or the Authority determines that the redevelopment project's reasonable and appropriate return on investment is below the market rate of return and supports an incentive award of all or a portion of the project financing gap;
4. The redevelopment project, except a film production project, is located in the incentive area;
5. Except for demolition and site remediation activities, the developer has not commenced any construction at the site of the redevelopment project prior to submitting an application. However, the Authority may determine that the redevelopment project would not be completed without the award or, in the event the redevelopment project is to be undertaken in phases, the requested incentive award is limited to only phases for which construction has not yet commenced;
6. The redevelopment project shall comply with minimum environmental and sustainability standards;
7. The redevelopment project shall comply with the Authority's affirmative action requirements, adopted pursuant to section 4 at P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), as provided at N.J.A.C. 19:31-23.14(a);
8. During the eligibility period, each worker employed to perform construction work or building services work at the redevelopment project shall be paid not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of the Department of Labor and Workforce Development pursuant to P.L. 1963, c. 150 (N.J.S.A. 34:11-56.25 et seq.) and P.L. 2005, c. 379 (N.J.S.A. 34:11-56.58 et seq.). In the event a portion of a redevelopment project is undertaken by a tenant and the tenant has a leasehold of more than 55 percent of space in the building owned or controlled by the developer, the requirement that each worker employed to perform building service work at the building be paid not less than the prevailing wage shall apply to the entire redevelopment project and all tenants therein. For construction work, prevailing wage shall apply to all work done by tenants at the redevelopment project;
9. The redevelopment project shall be completed, and the developer shall be issued a temporary certificate of occupancy for the redevelopment project facilities by the applicable enforcing agency within four years of executing the incentive award agreement corresponding to the redevelopment project. A redevelopment project with a project cost in excess of \$ 50,000,000 may complete the redevelopment project in phases and have the temporary certificate of occupancy issued no more than six years from the date on which the incentive award agreement is executed, provided that:
 - i. Each phase shall be \$ 50,000,000 or more, except for the last phase;
 - ii. The developer shall obtain a temporary certificate of occupancy for each phase; and
 - iii. The first temporary certificate of occupancy shall be obtained within four years of executing the incentive award agreement;

10. The developer has complied with all requirements for filing tax and information returns and for paying or remitting required State taxes and fees by submitting, as a part of the application, a tax clearance certificate, as described in section 1 at P.L. 2007, c. 101 (N.J.S.A. 54:50-39);

11. The developer, all principals of the developer, and any affiliate of the developer, is not more than 24 months in arrears of any financing obligation for the redevelopment project at the time of application;

12. Except for a residential project, food delivery source, or a health care or health services center with a minimum of 10,000 square feet of space devoted to health care or health services that is located in a municipality with a Municipal Revitalization Index distress score of at least 50 lacking adequate access, as determined by the Commissioner of the Department of Health, the overall public assistance provided to the project will result in a net positive economic benefit to the State; and

13. If the application includes a co-applicant, the developer and co-applicant demonstrate the following:

i. The co-applicant has complied with all requirements for filing tax and information returns and for paying or remitting required State taxes and fees by submitting, as a part of the application, a tax clearance certificate, as described in section 1 at P.L. 2007, c. 101 (N.J.S.A. 54:50-39);

ii. The co-applicant's organizational purpose encompasses the proposed participation;

iii. The co-applicant has the financial and operational capability to provide the proposed contribution or services;

iv. The co-applicant's proposed capital, real property, or services will materially affect and serve the anticipated residents, tenants, or customers of the tenants of the redevelopment project; and

v. The co-applicant's receipt and sale of the tax credits is necessary to finance the redevelopment project.

(b) The following are the only costs incurred prior to application that may be included as project costs:

1. For applications submitted on or after January 1, 2024, demolition, site remediation, and acquisition of buildings or other site improvements not including any land acquisition costs are project costs if incurred within two years prior to the date of the application;

2. For applications submitted on or after January 1, 2023, and prior to January 1, 2024, demolition, site remediation, and acquisition of buildings or other site improvements not including any land acquisition costs are project costs if incurred within three years prior to the date of the application; and

3. For applications submitted prior to January 1, 2023, demolition, site remediation, and acquisition of buildings or other site improvements not including any land acquisition costs are project costs if incurred within four years prior to the date of the application.

(c) To determine that the project has a project financing gap, the developer shall demonstrate that the redevelopment project has developer-contributed capital of at least 20 percent of the total development cost, except that if a redevelopment project is located in a government-restricted municipality, the developer-contributed capital shall be at least 10 percent of the total development cost.

(d) For a residential project to qualify for an incentive award, the residential project shall:

1. Have a total project cost of at least \$ 17,500,000, if the project is located in a municipality with a population greater than 200,000 according to the latest Federal decennial census;

2. Have a total project cost of at least \$ 10,000,000, if the project is located in a municipality with a population less than 200,000 according to the latest Federal decennial census; or

3. Have a total project cost of at least \$ 5,000,000, if the project is in a qualified incentive tract or government-restricted municipality.

(e) For a residential project or a redevelopment project consisting of newly constructed residential units to qualify for an incentive award, the developer shall reserve at least 20 percent of the residential units constructed 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 seq.).

(f) For all redevelopment projects, in order to include the cost of acquiring a building or buildings in the project cost of a redevelopment project involving the rehabilitation or improvement of the building or buildings, all other components of the project cost must equal or exceed the cost of acquiring the building or buildings.

19:31-23.4 Application submission requirements

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

1. The name of the business;
2. The contact information of the person identified as the primary contact for the business;
3. The prospective future address of the business (if different);
4. The type of the business;
5. The principal products and services and three-digit North American Industry Classification System number;
6. The New Jersey tax identification number;
7. The Federal tax identification number;
8. The total projected number of construction employees and permanent employees at the redevelopment project;
9. A description of the project, including a breakdown of uses and related square footage and costs, and the developer's experience with similar project(s);
10. A copy of a market and/or feasibility study for the proposed use of the project site by an independent third party, which must include the firm's position regarding the marketability and underwriting of the revenue and expense components of the proposed project for the duration of the eligibility period;
11. An anticipated construction schedule;
12. Financial information of the project, which shall include all phases, including, but not limited to, estimated project costs and total development costs, any State or local financial assistance for the project, proposed terms of financing, projected reasonable and appropriate return on investment on developer's contributed capital, net margin, and cash on cash yield, and a certification from the chief executive officer, or equivalent officer of the developer, that additional capital cannot be raised from other sources on a non-recourse basis after making all good faith efforts to raise additional capital, and any other documentation demonstrating economic and commercial viability pursuant to N.J.A.C. 19:31-23.3(a)2;
13. As applicable, a certification that the project meets the requirements to reserve residential units as set forth at N.J.A.C. 19:31-23.3(d);
14. A list of all of the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury permits and approvals or obligations and responsibilities, with which the developer 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 developer shall also submit a written certification by the chief executive officer, or equivalent officer of the developer, stating that the developer applying for the program satisfies the criteria at N.J.A.C. 19:31-23.7(b) to be in substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury;

15. A certification that any contractors or subcontractors that will perform work at the redevelopment project are registered as required by the Public Works Contractor Registration Act, P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.), have not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury;

16. A certification by the chief executive officer, or equivalent officer of the developer, that the officer has reviewed the application information submitted and that the representations contained therein are accurate;

17. 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;

18. Submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101;

19. A list of all the development subsidies, as defined at P.L. 2007, c. 200, that the developer is requesting or receiving, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received;

20. The status of control of the entire redevelopment project site, shown for each block and lot of the site as indicated on the local tax map;

21. A list and status of all required local, State, and Federal government permits and local planning and zoning board approvals that have been issued for the redevelopment project, or will be required to be issued, pending resolution of financing issues;

22. A description of how the minimum environmental and sustainability standards are to be incorporated into the proposed redevelopment project, including use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction;

23. For a redevelopment project whose total project cost equals or exceeds \$ 10 million and for which a community benefits agreement is required pursuant to N.J.A.C. 19:31-23.8(e), a letter of support from the chief executive of the municipality or county acknowledging the requirement for a community benefits agreements for the redevelopment project and affirming that the municipality or county shall proceed to negotiate a community benefits agreement in good faith with the developer and execute the community benefits agreement within the time required at N.J.A.C. 19:31-23.8(e)3;

24. Information required by the Authority to evaluate and determine the application's score pursuant to N.J.A.C. 19:31-23.7(c); and

25. Any other necessary and relevant information as determined by the Authority for a specific application, including, but not limited to, information needed to complete project financial review and developer capacity.

(b) If the developer is applying with a co-applicant, the application shall also include the following information of the co-applicant:

1. The name of the business;
2. The contact information of the person identified as the primary contact for the business;
3. The prospective future address of the business (if different);

4. The type of the business;
 5. The principal products and services and three-digit North American Industry Classification System number;
 6. The New Jersey tax identification number;
 7. The Federal tax identification number;
 8. A list of all of the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury permits and approvals or obligations and responsibilities, with which the co-applicant 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 co-applicant shall also submit a written certification by the chief executive officer, or equivalent officer of the eligible co-applicant, stating that the co-applicant applying for the program satisfies the criteria at N.J.A.C. 19:31-23.7(b) to be in substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury;
 9. A certification by the chief executive officer, or equivalent officer of the co-applicant, that the officer has reviewed the application information submitted and that the representations contained therein are accurate;
 10. 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;
 11. Submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101;
 12. A list of all the development subsidies, as defined at P.L. 2007, c. 200, that the co-applicant is requesting or receiving for the redevelopment project, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received;
 13. Organizing documents of the co-applicant and a narrative regarding the activity of the co-applicant generally, and in the State and municipality;
 14. A description of the long-term participation agreement between the co-applicant and the developer, including a description of how the co-applicant will take an active role in the redevelopment project, including a description of the capital, real property or services related to the project that the co-applicant will provide that directly affect and serve the anticipated residents, tenants, or customers of the tenants of the project;
 15. An explanation of the need for a co-applicant to receive and sell the tax credits to finance the redevelopment project; and
 16. Any other necessary and relevant information as determined by the Authority for a specific application, including, but not limited to, information needed to complete review of project financial review and developer capacity.
- (c) The Authority shall not consider an application for a redevelopment project, unless the developer submits with the application a letter evidencing support for the redevelopment project from the governing body of the municipality or municipalities in which the redevelopment project is located.
- (d) The Authority may, in its sole discretion, consider two or more applications as one application for one redevelopment project based on factors including, but not limited to, the location of the redevelopment projects, the types of uses proposed, and the developer's financing and operational plans.
- (e) If circumstances require a developer to amend its application to the Authority, then the developer, or chief executive officer or equivalent officer of the developer, shall certify to the Authority that the information provided in its amended application is true under the penalty of perjury.

19:31-23.5 Fees

(a) A developer applying for benefits under this program shall submit a one-time non-refundable application fee. The application fee shall be as follows:

1. For projects utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, the fee shall be \$ 10,000;
2. For projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and with total project cost of \$ 50 million or less, the fee shall be \$ 30,000. For other projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, the fee shall be \$ 50,000 without phases and \$ 75,000 with phases; and
3. For transformative projects, the fee shall be \$ 100,000 for each phase included in the proposed project.

(b) A developer 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) The developer shall pay to the Authority a non-refundable fee prior to the approval of the tax credit by the Authority as follows, except that the fee shall be refunded if the Authority does not approve the tax credit:

1. For projects utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, the fee shall be \$ 50,000;
2. For projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and with total project cost of \$ 50 million or less, the fee shall be \$ 50,000. For other projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, the fee shall be \$ 60,000 without phases and \$ 250,000 with phases; and
3. For transformative projects, the fee shall be \$ 500,000 for each phase included in the proposed project.

(d) For all redevelopment projects, including transformative projects, a developer shall pay, to the Authority, a non-refundable fee prior to the receipt of the tax credit certificate. For a phased transformative redevelopment project, the developer shall pay an additional non-refundable fee prior to the approval of the project cost certification for the second phase and each subsequent phases. The fee shall be as follows:

1. For projects utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, the fee shall be \$ 50,000;
2. For projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and with total project cost of \$ 50 million or less, the fee shall be \$ 50,000. For other projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, the fee shall be \$ 60,000 without phases and \$ 250,000 with phases; and
3. For transformative projects, the fee shall be \$ 500,000 for each phase included in the approved project.

(e) A developer shall pay, to the Authority, an annual servicing fee, beginning with the tax accounting or privilege period in which the Authority accepts the certification that the developer has met the eligibility requirements of the program for the respective redevelopment project, or the first phase for a phased transformative project, and for the duration of the eligibility period pursuant to N.J.A.C. 19:31-23.2. The annual servicing fee shall be paid to the Authority by the developer at the time the developer submits its annual report, as follows:

1. For projects utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, the fee shall be \$ 25,000;

2. For projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and with total project cost of \$ 50 million or less, the fee shall be \$ 30,000. For other projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, the fee shall be \$ 40,000 without phases and \$ 100,000 with phases; and

3. For transformative projects, the fee shall be \$ 200,000 for each phase included in the approved project.

(f) A developer applying for a tax credit transfer certificate pursuant to N.J.A.C. 19:31-23.12 or permission to pledge a tax credit transfer certificate purchase contract as collateral shall pay to the Authority a fee, as follows:

1. For projects utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, the fee shall be \$ 10,000;

2. For projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and with total project cost of \$ 50 million or less, the fee shall be \$ 10,000. For other projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, the fee shall be \$ 10,000 without phases and \$ 20,000 with phases; and

3. For transformative projects, the fee shall be \$ 20,000 for each phase included in the approved project.

(g) Upon application to pledge, assign, transfer, or sell any or all of its right, title, and interest in and to an incentive award agreement and in the incentive awards payable thereunder, a developer shall pay to the Authority a fee, as follows:

1. For projects utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, the fee shall be \$ 10,000;

2. For projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and with total project cost of \$ 50 million or less, the fee shall be \$ 10,000. For other projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, the fee shall be \$ 10,000 without phases and \$ 20,000 with phases; and

3. For transformative projects, the fee shall be \$ 20,000 for each phase included in the approved project.

(h) A developer shall pay to the Authority a non-refundable fee for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval, as follows:

1. For projects utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, a non-refundable fee of \$ 10,000 shall be paid for each request for any administrative change, addition, or modification to the tax credit; and a non-refundable fee of \$ 30,000 shall be paid for any major change, addition, or modification to the tax credit, such as those requiring extensive staff time and Board approval;

2. For projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and with total project cost of \$ 50 million or less, a non-refundable fee of \$ 10,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$ 30,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval. For other projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, a non-refundable fee of \$ 20,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$ 30,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval without phases and \$ 150,000 with phases; and

3. For transformative projects, a non-refundable fee of \$ 30,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$ 300,000 shall be

paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval.

(i) A non-refundable fee shall be paid for the first six-month extension to the date by which the developer shall provide project financing and planning documentation required in the approval letter pursuant to N.J.A.C. 19:31-23.8(a); and a non-refundable fee shall be paid for each subsequent extension, as follows:

1. For projects utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, the fee shall be \$ 7,500;

2. For projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and with total project cost of \$ 50 million or less, the fee shall be \$ 7,500. For other projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, the fee shall be \$ 10,000 without phases and \$ 15,000 with phases; and

3. For transformative projects, the fee shall be \$ 20,000 for each phase included in the approved project.

(j) A non-refundable fee shall be paid for the first six-month extension to the date by which the developer shall submit the satisfactory evidence with respect to the eligibility requirements of the program pursuant to N.J.A.C. 19:31-23.8(f) for the respective redevelopment project, or the respective phase of a phased transformative project pursuant to N.J.A.C. 19:31-23.11(d); and a non-refundable fee shall be paid for each subsequent extension, as follows:

1. For projects utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, the fee shall be \$ 7,500 for each extension;

2. For projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and with total project cost of \$ 50 million or less, the fee shall be \$ 7,500 for each extension. For other projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, the fee shall be \$ 10,000 without phases and for each subsequent extension shall be \$ 15,000 and \$ 15,000 with phases and for each subsequent extension shall be \$ 30,000; and

3. For transformative projects, the fee shall be \$ 20,000 for each phase included in the approved project and for each subsequent extension shall be \$ 40,000 for each phase included in the approved project.

(k) A developer seeking to terminate an existing incentive agreement in order to participate in an incentive award agreement authorized pursuant to the Aspire program shall pay to the Authority a non-refundable fee, as follows:

1. For projects utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, the fee shall be \$ 25,000;

2. For projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and with total project cost of \$ 50 million or less, the fee shall be \$ 25,000. For other projects not utilizing tax credits under the Federal Low-Income Housing Tax Credit Program, the fee shall be \$ 50,000; and

3. For transformative projects, the fee shall be \$ 100,000 for each phase included in the approved project.

(l) The fees paid to the Authority pursuant to this section shall not affect or reduce any fees due to the Agency.

19:31-23.6 Financing gap and fiscal impact analysis

(a) The Authority shall review the proposed total development cost and evaluate and validate the project financing gap estimated by each developer applying for an incentive award, as follows:

1. The Authority shall evaluate the proposed total redevelopment costs to develop, and the components of, the redevelopment project against reasonable market costs and components of comparable projects;

2. The Authority shall determine if the developer's submitted financial information for the project and, if applicable, all phases, is satisfactory. If satisfactory, the Authority shall incorporate the financial information in the project financing gap, including the reasonable and appropriate return on investment; and

3. The project financing gap analysis shall include, but not be limited to, an evaluation of the total development cost, amount of capital sufficient to complete the project, proposed rental rates, vacancy rates, reasonable and appropriate return on investment, and, in the Authority's sole discretion, a comparison to alternative financing structures for a comparable project available to the developer or its tenants.

(b) The Authority shall conduct a State fiscal impact analysis to ensure that the overall public assistance provided to the redevelopment project will result in a net positive economic benefit to the State, provided that the net positive economic benefit analysis shall not apply to a residential project, to a capital investment for a food delivery source, or a health care or health services center with a minimum of 10,000 square feet of space devoted to health care or health services that is located in a municipality with a Municipal Revitalization Index distress score of at least 50 lacking adequate access, as determined by the Commissioner of the Department of Health. In determining whether a project will result in a net positive economic benefit to the State, the Authority shall not consider the value of any taxes exempted, abated, rebated, or retained pursuant to the Five-Year Exemption and Abatement Law, P.L. 1991, c. 441 (N.J.S.A. 40A:21-1 et seq.), the Long Term Tax Exemption Law, P.L. 1991, c. 431 (N.J.S.A. 40A:20-1 et seq.), the New Jersey Urban Enterprise Zones Act, P.L. 1983, c. 303 (N.J.S.A. 52:27H-60 et seq.), or any other law that has the effect of lowering or eliminating the developer's State or local tax liability. The determination made pursuant to this subsection shall be based on the potential tax liability of the developer without regard for potential tax losses if the developer were to locate in another state. The Authority shall evaluate the net positive economic benefits on a present value basis under which the requested tax credit allocation amount is discounted to present value at the same discount rate as the projected benefits from the implementation of the proposed redevelopment project for which an award of tax credits is being sought.

(c) For a redevelopment project subject to the requirement at (b) above to be eligible for any tax credits under the program, a developer shall demonstrate to the Authority that the award of tax credits will yield a net positive economic benefit to the State not less than 185 percent of the award, except that a redevelopment project located in a government-restricted municipality shall yield a net positive economic benefit to the State not less than 150 percent of the incentive award. The net positive economic benefit shall be evaluated for the duration of the eligibility period. The chief executive officer or equivalent officer of the developer shall certify, under the penalty of perjury, that all documents submitted and factual assertions made to the Authority to demonstrate that the award of tax credits will yield a net positive economic benefit to the State in accordance with this subsection are true and accurate at the time of submission.

(d) In determining whether the redevelopment project yields the net positive economic benefit pursuant to (b) above and as certified by the chief executive officer or equivalent officer of the developer pursuant to (c) above, the Authority's consideration shall include, but not be limited to, the direct and indirect benefits to the State, including local taxes that may benefit the State, and may include induced benefits derived from construction, provided that such determination shall be limited to the net positive economic benefit derived from the capital investment commenced after the submission of an application to the Authority. For the purposes of calculating employee wages at the redevelopment project site to be included in the evaluation of the net positive economic benefit, the Authority shall rely upon the average wages in the region in which the respective redevelopment project is located.

(e) If, during the administration of the program, the methodology used by the Authority in evaluating the net positive economic benefit of redevelopment projects is modified, the Authority shall apply such modification to the methodology prospectively. Prospective application means using the modified methodology to pending applications and to redevelopment projects that have been previously approved if the developer requests a modification, or this subchapter or the incentive award agreement requires, or authorizes, the Authority to conduct a reevaluation of the net positive economic benefit.

(f) In determining net positive economic benefits for any business or person considering locating in a redevelopment project and applying to receive from the Authority any other economic development incentive

subsequent to the award of tax credits pursuant to the Act and this subchapter, the Authority shall not credit the business or person with any benefit that was previously credited to the redevelopment project.

19:31-23.7 Approval of completed application; tax credit amounts

(a) Prior to March 1, 2027, for redevelopment projects eligible pursuant to section 57 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-325) and this subchapter, the Authority shall award incentive awards based on the order in which complete, qualifying applications are received by the Authority. If interest in the program so warrants, at the Authority's discretion, and upon notice, the Authority may institute a competitive application process whereby all completed applications submitted by a date certain will be evaluated as if submitted on that date. The review will determine whether the applicant:

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

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

1. The Authority shall confirm with the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury that the developer and any co-applicant 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 developer, or any co-applicant, as applicable, has entered into an agreement with the respective department and any co-applicant, which may include a practical corrective action plan, as applicable.

i. Substantial good standing shall be determined by each department and mean, at a minimum, that the developer and any co-applicant:

(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 developer and any co-applicant; 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 an entity is in substantial good standing.

2. The Authority may contract with an independent third party to perform a background check on the developer and any co-applicant.

3. Any contractors or subcontractors that will perform work at the redevelopment project shall be registered as required by the Public Works Contractor Registration Act, P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.), shall not have been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and shall possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury.

(c) Provided that the requirements at (b) above are satisfied, the Authority shall allocate incentive awards to redevelopment projects according to the redevelopment project's score and until either the available incentive awards are exhausted or all redevelopment projects obtaining the minimum score receive an incentive award, whichever occurs first. The scoring shall be based on factors including, but not limited to, consistency of proposed use with applicable land use requirements or redevelopment plans; whether the redevelopment project adheres to smart growth, equitable development, and transit-oriented development principles; whether the redevelopment project has environmental or public health stressors and is located in an overburdened community pursuant to P.L. 2020, c. 92; whether the redevelopment project design anticipates long-term risks of climate change to the redevelopment project; and inclusion of workforce housing in a residential project not located in a distressed municipality. If insufficient funding exists to fully fund all eligible projects, a project may be offered partial funding.

(d) If a developer intends to apply to both the Authority and the Agency for tax credits, subsidies, or other financing, the developer shall notify the Agency simultaneously with any application made to the Authority. The Authority shall transmit its grant determination for such residential projects to the Agency, along with any information developed by the Authority and confirmation of the Authority's intent to provide an incentive award or award to the project. Approval of an application by the Agency, subject to the Agency's rules and guidelines for the applicable Agency program, shall be the final determination required for an incentive award for a residential project pursuant to this section.

(e) Up to the limits established at (f) and (g) below, and in accordance with an incentive award agreement, beginning upon completion of the capital investment and the receipt of the temporary certificate of occupancy for the redevelopment project or the first phase of an approved phased transformative project, or upon any other event evidencing project completion as set forth in the incentive award agreement, a developer shall be allowed a total tax credit under this program that shall not exceed the percentages in this subsection. For purposes of the calculation of tax credits, project cost shall be reduced by the amount of State and local grants and tax credits other than those awarded under this program.

1. Sixty percent of the total project cost for the new construction of a residential project that receives a four-percent allocation under the Federal Low-Income Housing Tax Credit Program;
2. Fifty percent of the total project cost for a commercial project that is located in a government-restricted municipality; or
3. Forty-five percent of the total project cost for any other redevelopment project.

(f) Notwithstanding the provisions at (e) above, for projects with tax credits under the Federal Low-Income Housing Tax Credit Program, in no event shall the sum of all tax credits awarded under any program administered by the Authority and the Federal Low-Income Housing Tax Credit Program exceed 90 percent of the project cost. For all other projects, in no event shall the sum of all tax credits awarded under any program administered by the Authority exceed 80 percent of the project cost.

(g) The value of all tax credits approved by the Authority under the program shall not exceed \$ 60,000,000 per redevelopment project or phase for a residential project that is allowed a tax credit pursuant to (e)1 above, or a redevelopment project or phase that is located in a qualified incentive tract, government-restricted municipality, or municipality with a Municipal Revitalization Index distress score of at least 50, and \$ 42,000,000 for any other redevelopment project or phase.

(h) The maximum amount of tax credits available to a developer to apply annually shall be equal to the total credit amount divided by the duration of eligibility period in years, fractions of a dollar rounded down.

19:31-23.8 Approval letter; incentive award agreement

(a) Upon receipt of a recommendation from the Authority staff on the redevelopment project, the Board shall determine whether or not to approve the application, the maximum amount of tax credits and the maximum

percentage amount of allowed tax credits for its capital investment in a redevelopment project, and promptly notify the applicant and the Director of the Division of Taxation of the determination.

1. The Board's award of the credits will be subject to conditions subsequent that must be met in order to retain the credits. An approval letter setting forth the conditions subsequent will be sent to the applicant and any co-applicant. Such conditions shall include, but not be limited to, the requirement that the project complies with the Authority's prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) and affirmative action requirements, P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), that the project does not violate any environmental law requirements, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13, and the requirement that the minimum environmental and sustainability standards are incorporated into the proposed project. The approval letter will require that the qualified residential project will be monitored by an administrative agent as defined at N.J.A.C. 5:80-26.2 during the eligibility period for purposes of the affordable housing reservation at N.J.A.C. 19:31-23.3(e). The approval letter shall also provide the requirements necessary for the Authority to execute the incentive award agreement.

2. The approval letter shall require documentation evidencing project financing and planning approvals, including the submittal of executed financing commitments, documents that evidence site control by the developer or an affiliate of the developer, a copy of the site plan approval, and a copy of all required permits and planning and zoning approvals and permits. If the Authority approval included a co-applicant, the required documents shall also include the executed participation agreement between the co-applicant and the developer with a term that extends for the duration of the eligibility period. Absent extenuating circumstances or the Authority's determination, in its sole discretion, the Authority's approval of the tax credits shall expire if the developer or co-applicant, as applicable, does not submit the documentation required in this paragraph within a year after approval of the application.

3. If the terms of the financial commitment contained in the evidence required by the approval letter are materially different from the projected terms in the application, the Authority may re-evaluate the project financing gap and reduce the size of the incentive award, accordingly.

4. The approval letter shall provide an estimated date of completion and include a requirement for periodic progress reports. If the Authority does not receive a progress report when required, or if the progress report demonstrates unsatisfactory progress, then the Authority, upon consultation with the Agency if the Agency has provided financial assistance or awarded tax credits to the redevelopment project, may rescind the incentive award. If the Authority rescinds an incentive award in the same calendar year in which the Authority approved the incentive award, then the Authority may allocate the unused tax credits to another applicant.

(b) Following satisfaction of the requirements for the execution of an incentive award agreement, the Authority shall enter into an incentive award agreement with the developer and any co-applicant. The Chief Executive Officer of the Authority shall negotiate the terms and conditions of the incentive award agreement on behalf of the State. The awarding of tax credits shall be conditioned on the developer's and any co-applicant's compliance with the requirements of the agreement.

(c) The incentive award agreement shall specify and include:

1. A detailed description of the proposed redevelopment project. For a phased project, the incentive award agreement may include an incentive phase agreement for each phase, which shall contain a description of the phase, the expected project cost and total development cost, and the commencement and completion for the respective phase;

2. The maximum amount of project cost and the maximum percentage of the project cost that will be used to calculate the amount of tax credits. If the actual project costs are less than the project cost set forth in the application, the tax credit shall be calculated based on the actual project cost;

3. The duration of the eligibility period;

4. A description of the occupancy permit or other event evidencing project completion that begins the eligibility period;
5. An ongoing requirement to provide the Authority with current personnel information that will enable the Authority to administer the program;
6. A requirement that the developer shall not cease to operate the redevelopment project during the eligibility period;
7. A method for the developer to certify that it has met the project cost and other eligibility requirements of the program;
8. A requirement for the developer to provide annual financial statements, as certified by a certified public accountant and accompanied by an unqualified opinion, reporting the project's financial performance;
9. Representations that the developer will comply with the minimum environmental and sustainability standards;
10. Representations that the developer and any co-applicants are in substantial good standing and that the redevelopment project will comply with all applicable laws, including, but not limited to, prevailing wage requirements pursuant to N.J.A.C. 19:31-23.14(b) and (c), affirmative action requirements pursuant to N.J.A.C. 19:31-23.14(a), and environmental laws, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13;
11. A provision permitting an audit of evidence and documentation, of the developer and any co-applicant, supporting the certifications pursuant to (f) below, and the annual reports pursuant to N.J.A.C. 19:31-23.9, as the Authority deems necessary;
12. Reporting requirements pursuant to N.J.A.C. 19:31-23.9;
13. A provision permitting the Authority to amend the agreement;
14. A provision establishing the conditions under which the Authority, the developer and any co-applicant, or all parties, may terminate the agreement;
15. Milestones for the redevelopment project, which shall include the estimated date of commencement and completion of the project, and a provision that the Authority, upon consultation with the Agency, if the Agency has provided financial assistance or awarded tax credits to the redevelopment project, may rescind the award of tax credits if a project fails to advance in accordance with milestones in the incentive award agreement or fails to provide progress reports required under the approval letter;
16. A provision to verify the financing gap at the time the developer provides executed permanent financing commitments to the Authority and a verification of the developer's projected cash flow at the time the developer submits the evidence of the completion of the project pursuant to (f) below. To ensure the protection of taxpayer money, if the Authority determines at project certification that the actual capital financing approach utilized by the project has resulted in a financing gap that is smaller than the financing gap determined at Board approval, the Authority shall reduce the amount of the tax credit or accept payment from the developer on a pro rata basis. If there is no project financing gap due to the actual capital financing approach utilized by the project, then the developer shall forfeit the incentive award;
17. A provision requiring that at the end of the seventh year of the eligibility period, the Authority shall evaluate the developer's reasonable and appropriate rate of return on investment and compare that reasonable and appropriate rate of return on investment to the reasonable and appropriate rate of return at the time of Board approval. If the actual rate of return on investment exceeds the reasonable and appropriate rate of return on investment at the time of Board approval by more than 15 percent, the Authority shall require the developer to pay 20 percent of the amount in excess of the reasonable and appropriate rate of return on investment. The Authority shall require an escrow account to be held by the Authority until the end of the eligibility period. Following the final year of the

eligibility period, the Authority shall determine if the developer's rate of return exceeded the reasonable and appropriate rate of return determined at Board approval. If the final rate of return does not exceed the reasonable and appropriate rate of return determined at Board approval, the Authority shall release to the developer the escrowed funds. If the project final rate of return exceeds the reasonable and appropriate rate of return determined at Board approval, the Authority shall require the developer to pay 20 percent of the amount of the excess, which shall include the funds held in escrow, and such funds shall be deposited in the State General Fund;

18. A provision acknowledging the Authority's right to confirm with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury, as set forth at N.J.A.C. 19:31-23.7(b)1, that the developer, and any co-applicant, is in substantial good standing or has entered into an agreement with the respective department that includes a practical corrective action plan, as applicable;

19. A provision providing that if the developer, and any co-applicant, is not in substantial good standing with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury and has not entered into an agreement with the respective department, as set forth at N.J.A.C. 19:31-23.7(b)1, and after being given written notice thereof and an opportunity to be heard or to contest the determination by the respective department, then the developer and any co-applicant shall forfeit the tax credits in any year in which the developer and any co-applicant is neither in substantial good standing with each department nor has entered into a practical corrective action;

20. A requirement that the developer shall confirm that each contractor or subcontractor performing work at the redevelopment project: is registered as required by the Public Works Contractor Registration Act, P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.); has not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State; and possesses a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury. The incentive award agreement shall also include a provision that the Authority may suspend the tax credits if the developer is not in compliance with this requirement, and if the suspension continues for two years, then, at the Authority's sole option, the developer and any co-applicant may forfeit the tax credits for those years;

21. A requirement for the developer to engage in on-site consultations prior to commencement of construction with the Division of Workplace Safety and Health in the Department of Health;

22. The incentive award agreement shall include a provision allowing the Authority to extend, in individual cases, the deadline for any annual reporting or project completion certification requirement;

23. Indemnification and insurance requirements from the developer and any co-applicant;

24. Events that would trigger forfeiture, reduction, or recapture of the tax credits, including, but not limited to, provisions in this subchapter; and

25. Default and remedies, including, but not limited to, a default if a developer or any co-applicant made a material misrepresentation on its application.

(d) The Authority shall not enter into an incentive award agreement for a redevelopment project that includes at least one retail establishment which will have more than 10 full-time employees, at least one distribution center that will have more than 20 full-time employees, or at least one hospitality establishment which will have more than 10 full-time employees, unless the incentive award agreement includes a precondition that any business that serves as the owner or operator of the retail establishment, distribution center, or hospitality establishment enters into a labor harmony agreement with a labor organization or cooperating labor organizations that represent retail or distribution center employees in the State. A labor harmony agreement shall be required only if the State has a proprietary interest in the redevelopment project and shall remain in effect for as long as the State acts as a market participant in the redevelopment project. The Authority may enter into an incentive award agreement with a developer and any co-applicants without the labor harmony agreement required under this subsection, if the Authority determines that the redevelopment project would not be able to go forward if a labor harmony agreement is required. The Authority shall support the determination by a written finding, which provides the specific basis for the determination.

(e) For a redevelopment project whose total project cost equals or exceeds \$ 10 million, in addition to the incentive award agreement, the developer shall execute a community benefits agreement or agreements pursuant to subsection e. of section 60 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-328), as prescribed below. Any co-applicant that is responsible or required to provide services under the community benefits agreement shall also execute the community benefits agreement.

1. The developer shall enter into a community benefits agreement with the Authority and the chief executive of the municipality or, if requested by the chief executive of the municipality, the chief executive of the county, in which the redevelopment project is located. If the municipality requests the county to enter into the agreement, the chief executive of the municipality must submit to the Authority a signed letter notifying the Authority that the municipality has made the request. The Authority shall not participate in negotiations between the developer and the municipality or county; however, the Authority shall review the agreement prior to the execution of the agreement to determine compliance with the requirements of this subsection including, but not limited to, a provision for mediation as required pursuant to (e)6ii below. The agreement may include, but shall not be limited to, requirements for training, employment, and youth development and free services to underserved communities in and around the community in which the redevelopment project is located, as well as any other program element, on the project site or in the host community, intended to improve community health, safety, access to opportunity, recreational opportunity, environmental resilience and environmental quality, quality of life, or other locally-prioritized community benefit.

2. The community benefits agreement shall include a list of contributions by the developer; the monetary equivalent for any non-monetary contribution; an event of default, if the developer forfeits tax credits pursuant to (e)7ii below in two successive years; and the date by which the community advisory committee must submit its annual report pursuant to (e)6 below.

3. The developer and the municipality or county shall have six months, with two three-month extensions, after Authority Board approval of the developer's application, to enter into a community benefits agreement. The community benefits agreement is a condition to entering into an incentive award agreement.

4. Prior to entering a community benefits agreement, the governing body of the municipality or, if the county is executing the agreement, the governing body of the county, in which the redevelopment project is located shall hold at least one public hearing subject to the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6, at which the chief executive or designee from the chief executive's department or office, shall hear testimony from residents, community groups, and other stakeholders on the needs of the community that the agreement should address. The chief executive shall provide a record, including hearing minutes, satisfactory to the Authority, which shall be an exhibit to the community benefits agreement.

5. The community benefits agreement shall provide for the creation of a community advisory committee to oversee the implementation of the agreement, monitor successes, and ensure compliance with the terms of the agreement, as follows:

i. The community advisory committee created pursuant to this paragraph shall be comprised of representatives from diverse community groups and residents of the municipality or, if the county is executing the agreement, community groups and residents of the county in which the redevelopment project is located.

ii. The chief executive of the municipality or, if the county is executing the agreement, the chief executive of the county shall appoint the members of the community advisory committee, which shall consist of not less than three members.

iii. For new construction or substantial rehabilitation projects, the community advisory committee shall have at least one representative from the business community in the zip code in which the redevelopment project is located, at least one representative from a community group, and at least one resident from the zip code in which the redevelopment project is located. There shall be no more than one municipal or county employee on the community advisory committee.

iv. For all other projects, the community advisory committee shall be determined by the chief executive of the municipality, or if the county is executing the agreement, the chief executive of the county, without regard to the criteria listed at (e)5iii above.

v. Community advisory committee members shall be required to sign a letter certifying that they have no financial or other interested relationship with the developer and any co-applicant. The certifications shall be submitted to the Authority by the developer or the municipality, or if the county is executing the agreement, the county.

vi. Any report or action shall be approved by a majority of the members of the community advisory committee.

6. The community advisory committee shall produce an annual report, including an evaluation of whether the developer is in compliance with the terms of the community benefits agreement:

i. If the report from the community advisory committee and the certification from the developer pursuant to N.J.A.C. 19:31-23.9(b)1 both indicate that the developer is in compliance with the community benefits agreement, then the developer shall be in compliance with the community benefits agreement. Absent extenuating circumstances, and the written approval of the Authority, if the community advisory committee does not timely submit the annual report, then the determination of compliance of the developer shall be based on the certification from the developer pursuant to N.J.A.C. 19:31-23.9(b)1.

ii. If the report from the community advisory committee indicates that the developer is not in compliance with the terms of the community benefits agreement, the Authority shall serve as, or identify, a mediator. The community advisory committee, municipality or county, as applicable, and the developer shall enter into non-binding mediation to seek resolution or mutually agreeable amendments to the community benefits agreement within 60 days of the notice from the Authority of the person who will serve as a mediator. Thereafter, the results of the mediation shall be reported to the Authority.

iii. If a resolution is not able to be achieved through mediation, a hearing officer will be assigned by the Authority. 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. Following completion of the record review and in-person hearing, as applicable, the hearing officer shall issue a written report to the Chief Executive Officer containing his or her finding(s) and recommendation(s). The hearing officer's report shall be advisory in nature. The developer, municipality or county, and the community advisory committee shall receive a copy of the written report of the hearing officer 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. The Chief Executive Officer shall consider the hearing officer's report and any timely submitted written comments and exceptions. Based on that review, the Chief Executive Officer shall make a determination of compliance or non-compliance. The process described in this subsection is not a contested case subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

7. If the developer is not in compliance as determined pursuant to (e)6 above, the following shall apply:

i. The amount of tax credits that the developer may apply in the relevant tax period shall be reduced by 120 percent of the sum of the monetary values of the contributions for which the developer is not in compliance, if the Authority determines that:

(1) Compliance with the specific contribution is delayed due to unforeseeable acts related to the project beyond the eligible developer's control and without its fault or negligence;

(2) The developer is using best efforts, with all due diligence, to proceed with the completion of the contribution; and

(3) The developer has made all reasonable efforts to prevent, avoid, mitigate, and overcome the noncompliance; and

ii. For any other noncompliance, the developer shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating compliance has been reviewed and approved by the Authority. The full amount of the credit shall be allowed for the first tax period in which the Authority has approved compliance and each subsequent tax credit for which the Authority approves compliance.

8. A developer shall not be required to enter into a community benefits agreement pursuant to this subsection 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 standards pursuant to (e)2 above required for a community benefits agreement in this subsection, as determined by the Chief Executive Officer.

9. The sum of costs for benefits and services provided under the community benefits agreement included as soft costs or to determine cash flow shall not exceed five percent of project cost. For purposes of this paragraph, costs for benefits and services incurred during the eligibility period shall be discounted to present value.

(f) A developer shall submit, prior to the issuance of tax credits under the incentive award agreement, but no later than six months following project completion, satisfactory evidence of the completion of the redevelopment project and satisfaction of the program eligibility requirements, which shall include, but not be limited to, the documents in this subsection. The Authority may provide any information contained in the annual report to the Agency for any redevelopment project if the Agency has provided financial assistance or awarded tax credits to the redevelopment project.

1. Evidence of a temporary certificate of occupancy or other event evidencing project completion that begins the eligibility period indicated in the incentive award agreement;

2. A certification by a qualified independent certified public accountant of the actual project costs. The certification shall be made pursuant to an "agreed upon procedures" letter acceptable to the Authority. If the project cost is reduced below the relevant minimum project cost for eligibility, the redevelopment project shall no longer be eligible. If the project cost in the certification is less than the project cost in the approval of the application, the Authority may re-evaluate the net positive economic benefit and reduce the size of the tax credits accordingly. The Authority shall qualify certified public accountants and provide to the developer the list of qualified certified public accountants; provided, however, the developer may select a certified public accountant that is independent to the developer and any co-applicant and not on the Authority's list of qualified certified public accountants for purposes of the project cost certification if the developer demonstrates an extenuating circumstance prohibiting the developer 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 developer;

3. A floor plan identifying the actual and proposed uses and square foot of gross leasable area for each such use. For a redevelopment project approved as a commercial project, evidence that the redevelopment project is predominantly commercial; and for a redevelopment project approved as a residential project, evidence that the redevelopment project is predominantly residential;

4. A certification indicating whether or not the developer is aware of any condition, event, or act that would cause the developer or any co-applicant not to be in compliance with the approval, the Act, or this subchapter;

5. Documentary evidence that a deed restriction reserving units pursuant to N.J.A.C. 19:31-23.3(e) or 23.11(e) has been recorded against each residential component of the redevelopment project. The deed restriction shall require that all residential units remain residential units until the eligibility period has expired;

6. If the redevelopment project was approved as a film production project, evidence that the redevelopment project qualifies as a film production project;

7. A certification from a licensed engineer that the redevelopment project has adhered in all material respects to the plan submitted by the developer describing how the developer would satisfy the minimum environmental and sustainability standards;

8. A certification by the chief executive officer or equivalent officer of the developer that the information provided pursuant to this subsection is true under the penalty of perjury. Claims, records, or statements submitted by a developer to the Authority in order to receive tax credits shall not be considered claims, records, or statements made in connection with State tax laws; and

9. If the Authority approval included a co-applicant, a certification that the participation agreement between the developer and the co-applicant remains in effect and is not in default.

(g) A developer shall forfeit the credit amount for any tax period for which the developer's documentation remains uncertified by the Authority as of the date for certification indicated in the incentive award agreement, although credit amounts for the remainder of the years of the eligibility period shall remain available to the developer.

(h) Once the Authority accepts the documentation required at (f) above and the Authority determines that other required conditions have been met, within 90 days of the Authority's acceptance of the documentation and evidence satisfactory to the Authority, the Authority shall notify the developer and notify the Director, and the developer shall receive its tax credit certificate that will be based on the information submitted in the certification pursuant to (f) above, provided it shall not exceed the maximum amount determined by the Board pursuant to N.J.A.C. 19:31-23.7(e), (f), and (g). The use of the tax credit certificate shall be subject to the receipt of an annual certificate of compliance issued by the Authority.

(i) At, or before, the date of certification, any modification to the redevelopment project as approved by the Board, including, but not limited to, a reduction in the amount of the project cost, or square feet, shall require review and approval by the Authority to determine that the redevelopment project as modified does not undermine the basis for the tax credit award approved.

19:31-23.9 Reporting requirements and annual report

(a) A developer approved for an incentive award and that enters an incentive award agreement shall submit annually, commencing in the year in which the incentive award is issued and for the remainder of the eligibility period, a report indicating whether the developer is aware of any condition, event, or act that would cause the developer or any co-applicant not to be in compliance with the incentive award agreement or the provisions of this subchapter and the Act and any additional reporting requirements contained in the incentive award agreement or tax credit certificate. The developer, or an authorized agent of the developer, shall certify that the information provided pursuant to this subsection is true under the penalty of perjury. The Authority may provide any information contained in the annual report to the Agency for any redevelopment project if the Agency has provided financial assistance or awarded tax credits to the redevelopment project.

(b) The annual report shall consist of:

1. A certification indicating whether or not the developer is aware of any condition, event, or act that would cause the developer or any co-applicant not to be in compliance with the approval, the Act, the incentive award agreement, community benefits agreement pursuant to subsection f. of section 60 at P.L. 2020, c. 156 and N.J.A.C. 19:31-23.8(e), or this subchapter;

2. A certification indicating that the project does not violate any environmental law requirements, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13;

3. For the two years after the first certificate of compliance is issued, evidence that the redevelopment project remains in compliance with the Authority's affirmative action requirements pursuant to N.J.A.C. 19:31-23.14(a);

4. Evidence that the redevelopment project remains in compliance with the Authority's prevailing wage requirements pursuant to N.J.A.C. 19:31-23.14(b) and (c);

5. A tax clearance certificate as described in section 1 at P.L. 2007, c. 101 (N.J.S.A. 54:50-39) for the developer and any co-applicant;

6. A certification from the developer that the project is still operating and that the redevelopment project is predominantly residential or commercial in accordance with the approval of the project. If the redevelopment project was approved as a film production project, the developer shall certify that the redevelopment project remains a film production project;

7. For a commercial project, a list of all tenants, the gross leasable area leased by each tenant, and whether the tenant is operating its business at the premises leased by the tenant;

8. For a project with residential units, documentary evidence that the deed restriction required pursuant to N.J.A.C. 19:31-23.8(f)6 remains recorded, and documentation from the administrative agent that the redevelopment project remains in compliance with the affordability controls pursuant to the Fair Housing Act, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.);

9. The rent roll for all residential units;

10. Annual financial statement, as certified by a certified public accountant and accompanied by an unqualified opinion, reporting the project's financial performance;

11. A certification indicating compliance with the community benefits agreement required pursuant to N.J.A.C. 19:31-23.8(e);

12. If applicable, satisfactory evidence that the developer complies with the labor harmony agreement requirement pursuant to N.J.A.C. 19:31-23.8(d);

13. For the first annual report, the permanent certificate of occupancy covering the entire redevelopment project;

14. If the Authority approval included a co-applicant, a certification that the participation agreement between the developer and the co-applicant remains in effect and is not in default and that the co-applicant is making the contribution(s) required under the participation agreement; and

15. In conducting its annual review, the Authority may require a developer to submit any information determined by the Authority to be necessary and relevant to its review.

(c) The report required at (a) above is due 120 days after the end of the developer's tax privilege period. Failure to timely submit the report, absent extenuating circumstances and the written approval of the Authority, shall result in a forfeiture of the tax credits for that privilege period. The Authority reserves the right to audit any of the representations made and documents submitted in the annual report.

(d) Upon receipt, review, and acceptance of each report submitted during the eligibility period, the Authority shall provide to the developer and the Director a certificate of compliance indicating the amount of tax credits that the developer may apply against the developer's tax liability. If the Authority approval included a co-applicant, the Authority shall provide the certificate of compliance to the co-applicant with a notice to the developer. The Authority shall prorate the tax credit for the first and last years of the eligibility period based on the number of full months the project was certified in the year the developer first certifies. No tax credit certificate will be valid without the certificate of compliance issued for the relevant tax privilege period.

(e) Upon receipt by the Director of the certificate of compliance, the Director shall allow the developer or co-applicant a credit against the tax imposed pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5). A developer, or co-applicant, shall apply the credit awarded against the developer's liability under section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), sections 2 and 3 at P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), section 1

of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or N.J.S.A. 17B:23-5 for the tax period during which the Director allows the developer or co-applicant a tax credit pursuant to this subsection. A developer, or co-applicant, shall not carry forward an unused credit, unless the developer or co-applicant was unable to use the credit because the developer's redevelopment project was directly impacted by a natural disaster, State emergency, national emergency, or a situation that was out of the developer's control that adversely affected the developer's or co-applicant's use of the credit that year. The developer or co-applicant may be permitted to carry forward an unused credit for up to two years, providing one or both has submitted evidence of the developer's redevelopment project being directly impacted by such a circumstance and receiving approval from the Authority and the Director. Credits granted to a partnership shall be passed through to the corporate partners, corporate members, or corporate owners, respectively, pro rata, or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method provided to the Director accompanied by any additional information as the Director may prescribe consistent with any rule, guidance, or other publication issued by the Division of Taxation.

(f) The Director shall prescribe the order of priority of the application of the credit allowed pursuant to this section and any other credits allowed by law against the tax imposed pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5). The amount of the credit applied pursuant to this section against the tax imposed pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) for a tax privilege period, together with any other credits allowed by law, shall not reduce the tax liability to an amount less than the statutory minimum provided at subsection (e) of section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5).

19:31-23.10 Reduction, forfeiture, and recapture of tax credits

(a) The developer and any co-applicant shall forfeit all credit for the tax period in which the change occurs and each subsequent tax period, if:

1. The developer changes a project that has been approved as a residential project to a commercial project or changes a project that has been approved as a commercial project to a residential project;
2. The developer changes a project that has been approved as a film production project outside the incentive area to a project that is not a film production project;
3. Absent prior written approval of a modification by the Authority, the developer changes the uses of the redevelopment project that were utilized to determine the net positive economic benefit pursuant to N.J.A.C. 19:31-23.6(b) and 23.11(l) or of a transformative project that were utilized to determine the anticipated employee occupancy pursuant to N.J.A.C. 19:31-23.11(a)4i(1); or
4. The developer changes the project, so that the project would score less than the minimum score pursuant to N.J.A.C. 19:31-23.7(e).

(b) If any labor harmony agreement requirement pursuant to N.J.A.C. 19:31-23.8(d) is not satisfied during the relevant tax period, then the developer and any co-applicant shall forfeit all credit for the tax period in which the labor harmony agreement requirements are not satisfied and each subsequent tax period until the first tax period for which documentation demonstrating compliance has been reviewed and approved by the Authority, for which tax period and each subsequent period the full amount of the credit shall be allowed.

(c) If, during the eligibility period, the occupancy of a project is reduced to less than 60 percent, the developer and any co-applicant shall forfeit all credit for the tax period in which the change occurs and each subsequent tax period until the first tax period for which documentation demonstrating the restoration of occupancy to the threshold level required by this subsection has been reviewed and approved by the Authority, for which tax period and each subsequent period the full amount of the credit shall be allowed. For the purposes of this subsection, 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.

(d) As of the date of the annual report pursuant to N.J.A.C. 19:31-23.9, if any worker employed to perform construction work or building services work at the redevelopment project is paid less than the prevailing wage rate for the worker's craft or trade pursuant to N.J.A.C. 19:31-23.3(a)8 during the relevant tax period, then the developer and any co-applicant shall forfeit all credit for the tax period in which the prevailing wage is not paid and each subsequent tax period until the first tax period for which documentation demonstrating compliance has been reviewed and approved by the Authority, for which tax period and each subsequent period the full amount of the credit shall be allowed.

(e) If the developer or co-applicant, if a party to the community benefits agreement, is not in compliance with the community benefits agreement pursuant to N.J.A.C. 19:31-23.8(e), the Authority shall reduce the size of the award by the amount equal to 120 percent of the monetary value of the contribution or contributions for which the developer or co-applicant, if applicable, is not in compliance. This reduction shall not affect any recapture pursuant to any provisions in this section.

(f) If, based on new information, the Authority determines that forfeiture or recapture should have been applicable pursuant to any of the provisions in this section, the Authority shall recapture the tax credits for the relevant tax period(s).

(g) If, at any time, the Authority determines that the developer or co-applicant made a material misrepresentation on the developer's application, project completion certification, annual report, or any related submissions, the developer and any co-applicant shall forfeit, and the Authority may recapture any or all of, the incentive award and all tax credits awarded under the program, which shall be in addition to any other remedies in the incentive award agreement and any criminal or civil penalties to which the developer, co-applicant, and the respective officer may be subject.

(h) The developer shall provide an updated project pro forma and other relevant financial documentation to the Authority when the incentive award agreement is to be terminated. The Authority shall evaluate the reasonable and appropriate return on investment as of the date of termination in the same manner as at the end of the eligibility period pursuant to N.J.A.C. 19:31-23.7(c)17.

(i) If the developer fails to provide the financial documentation required for the Authority to evaluate the reasonable and appropriate return on investment pursuant to (h) above or N.J.A.C. 19:31-23.8(c)17, the Authority shall recapture all of the tax credits awarded.

(j) Any recapture amount pursuant to this section 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.

(k) The Authority shall notify the Agency of any reduction, forfeiture, or recapture of tax credit if the Agency has provided financial assistance or awarded tax credits to the redevelopment project.

(l) If all or part of a tax credit sold or assigned pursuant to section 63 at P.L. 2020, c. 156, and N.J.A.C. 19:31-23.12(a) is subject to recapture, then the Authority shall pursue recapture from the developer and to the extent the co-applicant is involved with the basis for the recapture, any co-applicant, and not from the purchaser or assignee of the tax credit transfer certificate.

(m) Any funds recaptured pursuant to this section, including penalties and interest, shall be deposited into the General Fund of the State.

19:31-23.11 Transformative projects

(a) To be eligible as a transformative project, the redevelopment project must satisfy the following criteria:

1. Has a project financing gap;
2. Has a total project cost of at least \$ 100,000,000;
3. Includes:
 - i. 500,000 or more square feet of new or substantially renovated industrial, commercial, or residential space, exclusive of any parking component; or
 - ii. 250,000 or more square feet of film, professional stages, television studios, recording studios, screening rooms, or other infrastructure for film production, exclusive of any parking component;
4. For commercial projects, is of special economic importance and creates modern facilities that enhance the State's competitiveness in attracting targeted industries by meeting the following criteria:
 - i. Except for a redevelopment project with 250,000 or more square feet of film, professional stages, television studios, recording studios, screening rooms, or other infrastructure for film production, either:
 - (1) Creates 500 new full-time jobs, which shall be demonstrated by determining the anticipated employee occupancy based on the regional averages for employment density for the type of use or uses at the redevelopment project; or
 - (2) Involves the substantial renovation of a vacant commercial building; and
 - ii. Provides opportunities to leverage leadership in a high-priority targeted industry as demonstrated by factors including, but not limited to, being undertaken by a developer that is making an industry leading investment in a new technology or high-growth sub-industry or catalyzing a new sub-industry or industry-cluster within the State;
5. For residential projects:
 - i. Is of special economic importance by meeting one of the following criteria:
 - (1) The project is located in a government-restricted municipality, enhanced area, or distressed municipality;
 - (2) The project is not located in a government-restricted municipality, enhanced area, or distressed municipality and includes at least 20 percent of new residential units for low- and moderate-income households or workforce housing, in addition to the 20 percent of the new residential units for occupancy by low- and moderate-income households required pursuant to (e) below; or
 - (3) Involves the substantial renovation of a vacant commercial building; and
 - ii. Either includes:
 - (1) The construction of 1,000 or more new residential units; or
 - (2) Is a mixed-use residential project with construction of 100,000 square feet or more of retail or commercial space, exclusive of any parking component and with the majority of such non-residential use being commercial, and includes one of the following:
 - (A) If the project is located in a government-restricted municipality, includes the construction of 250 or more new residential units;
 - (B) If the project is located in an enhanced area, includes the construction of 350 or more residential units; or
 - (C) If the project is not located in a government-restricted municipality or enhanced area, and includes the construction of 600 or more residential units; and

6. Leverages 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.

(b) A transformative project shall not include a redevelopment project at which more than 50 percent of the premises is occupied by one or more businesses engaged in final point of sale retail, including, but not limited to, hotels and hospitals.

(c) A transformative project, other than a project that includes 250,000 or more square feet of film studios, professional stages, television studios, recording studios, screening rooms or other infrastructure for film production, shall be located in an incentive area, a distressed municipality, a government-restricted municipality, or an enhanced area. A transformative project receiving an incentive award pursuant to this section that includes 250,000 or more square feet of film studios, professional stages, television studios, recording studios, screening rooms or other infrastructure for film production may be located anywhere in the State. No more than two transformative projects receiving an incentive award pursuant to this section shall be located in the same municipality. The Authority shall not consider an application for a transformative project unless the applicant submits with its application a letter evidencing support for the transformative project from the governing body of the municipality in which the transformative project is located.

(d) A transformative project may be completed in phases, which phases may be determined by the Authority based on factors, such as written architectural plans and specifications completed before or during the physical work, certificates of occupancy, or financial and operational plans.

(e) All transformative projects that include newly constructed residential units shall reserve at least 20 percent of the new residential units 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 seq.).

(f) The Authority shall review and determine whether to approve an incentive award to a transformative project in accordance with the provisions applicable to any redevelopment project, unless otherwise provided in this section.

(g) For transformative projects completed in phases, the developer and any co-applicant shall enter into a transformative phase agreement with the Authority. As used in this subsection, "transformative phase agreement" shall mean a sub-agreement of the incentive award agreement that governs the timing, capital investment, and other applicable details of the respective phase of a phased project. The transformative phase agreement may be incorporated in the incentive award agreement.

(h) Notwithstanding the provisions of section 57 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-325), any other section at P.L. 2020, c. 156 (N.J.S.A. 34:1B-269 et seq.), or other sections in this subchapter to the contrary, for transformative projects completed in phases, the transformative project shall be completed, and the developer shall be issued temporary certificates of occupancy for all phases of the transformative project by the applicable enforcing agency within eight years of executing either the incentive award agreement or the first transformative phase agreement corresponding to the transformative project. For a project component to be allowed as a phase, a developer shall obtain a temporary certificate of occupancy for the entirety of the component and the component shall be \$ 50,000,000 or more except for the last component.

(i) Notwithstanding the provisions of sections 55 and 60 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-323 and 34:1B-328), any other section at P.L. 2020, c. 156 (N.J.S.A. 34:1B-269 et seq.), or other sections in this subchapter to the contrary, each phase of a transformative project completed shall have a separate eligibility period. After completing each phase, the developer shall submit a certification that the phase is completed with the documents required pursuant to N.J.A.C. 19:31-23.8(f). In the certification for the project cost for that phase, any infrastructure work completed at the same time shall be included in the certification for that phase. If the Authority approves the certification, the tax credit allowed to the developer or co-applicant shall be increased by the tax credit amount corresponding to that phase, which shall include only the infrastructure attributable to that phase. Notwithstanding the different eligibility periods for each phase, all conditions and requirements applicable during an eligibility period

pursuant to sections 55 through 67 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-323 through 34:1B-335) and all other sections in this subchapter shall apply to the entire transformative project until the end of the eligibility period for the last phase. If, upon review of the certification and documentation for any phase, the project no longer qualifies as a transformative project, the developer and any co-applicant shall forfeit all tax credits for that tax period and all subsequent tax periods.

(j) Notwithstanding the provisions of section 60 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-328), any other section at P.L. 2020, c. 156 (N.J.S.A. 34:1B-269 et seq.), or other sections in this subchapter to the contrary, for a transformative project completed in phases, a review of the project financing gap shall be performed at the certification of completion of each phase, and the Authority may resize the incremental tax credit for that phase or subsequent phases. The Authority shall re-evaluate the developer's reasonable and appropriate return on investment in the seventh year and at the end of the eligibility period for the last phase, provided that the Authority may also re-evaluate the developer's reasonable and appropriate return on investment during the fifth year of any earlier phase.

(k) The Authority shall review the transformative project cost, and evaluate and validate the project financing gap estimated by the developer. The Authority shall perform a single project financing gap analysis for a transformative project.

(l) The Authority shall conduct a State fiscal impact analysis to ensure that the overall public assistance provided to the transformative project will result in a net positive economic benefit to the State in accordance with the percentages pursuant to N.J.A.C. 19:31-23.6(c). The Authority shall determine a single net positive economic benefit for a transformative project, including a phased transformative project, and the net positive economic benefit evaluation shall be conducted for the period beginning with the first eligibility period and ending with the last eligibility period. In determining whether a transformative project will result in a net positive economic benefit to the State, the Authority shall not consider the value of any taxes exempted, abated, rebated, or retained under the Five-Year Exemption and Abatement Law, P.L. 1991, c. 441 (N.J.S.A. 40A:21-1 et seq.), the Long Term Tax Exemption Law, P.L. 1991, c. 431 (N.J.S.A. 40A:20-1 et seq.), the New Jersey Urban Enterprise Zones Act, P.L. 1983, c. 303 (N.J.S.A. 52:27H-1 et seq.), or any other law that has the effect of lowering or eliminating the developer's State or local tax liability. The determination made pursuant to this subsection shall be based upon the potential tax liability of the developer without regard for potential tax losses if the developer were to locate in another state. The Authority shall evaluate the net positive economic benefits on a present value basis under which the requested tax credit allocation amount is discounted to present value at the same discount rate as the projected benefits from the implementation of the proposed transformative project for which an award of tax credits is being sought. Projects that are predominantly residential shall be excluded from the calculation of the net positive economic benefit test required pursuant to this subsection.

(m) In determining net positive economic benefits for any business or person considering locating in a transformative project and applying to receive from the Authority any other economic development incentive subsequent to the award of transformative project tax credits pursuant to section 65 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-333) and this section, the Authority shall not credit the business or person with any benefit that was previously credited to the transformative project pursuant to section 65 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-333) and this section.

(n) The Authority shall administer the credits awarded pursuant to this section, in accordance with the provisions of sections 62 and 63 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-330 and 34:1B-331); and N.J.A.C. 19:31-23.9, 23.10, 23.12, and 23.13.

(o) Prior to allocating an incentive award to a developer, the Authority shall confirm that the transformative project satisfies the requirements at N.J.A.C. 19:31-23.7(b)1 for substantial good standing or agreement with the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, the Department of the Treasury, and N.J.A.C. 19:31-23.7(b)3 regarding contractors and subcontractors.

(p) Notwithstanding the limitation on incentive awards set forth at subsection b. of section 61 and section 98 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-329 and 34:1B-362) and any other sections in this subchapter to the contrary, the

Authority may allow a developer of a transformative project a tax credit, as reimbursement for certain project financing gap costs, in an amount not to exceed 40 percent of the total project cost, the total value of the project financing gap, or \$ 350,000,000, whichever is less, provided, however, that for a transformative project that is developed in phases, the \$ 350,000,000 limitation on incentive awards set forth in this subsection shall apply to the total aggregate award for all phases of the transformative project. For purposes of the calculation of tax credits, project cost shall be reduced by the amount of State and local grants and tax credits other than those awarded under this program.

(q) For a transformative project, the approval letter shall contain conditions that must be satisfied and documents and certifications that must be submitted for each phase. Until the developer submits the certification for the last phase, the developer shall submit progress reports for each phase that has not yet been certified.

19:31-23.12 Application for tax credit transfer certificate

(a) A developer or co-applicant may apply to the Director and the Chief Executive Officer of the Authority for a tax credit transfer certificate, covering one or more years, in lieu of the developer or co-applicant being allowed any amount of the credit against the tax liability of the developer. The tax credit transfer certificate, upon receipt thereof by the developer or co-applicant from the Director and the Chief Executive Officer of the Authority, may be sold or assigned, in full or in part, in an amount not less than \$ 25,000, in the privilege period during which the developer or co-applicant receives the tax credit transfer certificate from the Director, to another person, who may apply the credit against a tax liability pursuant to section 5 at P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), sections 2 and 3 at P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), section 1 at P.L. 1950, c. 231 (N.J.S.A. 17:32-15), or N.J.S.A. 17B:23-5. The certificate provided to the developer or co-applicant shall include a statement waiving the developer's or co-applicant's right to claim the amount of the credit that the developer has elected to sell or assign against the developer's tax liability.

(b) The developer or co-applicant shall not sell or assign, including a collateral assignment, a tax credit transfer certificate allowed pursuant to this section for consideration received by the developer or co-applicant of less than 85 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted. The developer or co-applicant shall submit to the Authority documentation evidencing the value of the tax credits that may include, but not be limited to, the purchase agreement, except:

1. A developer or co-applicant of a residential project consisting of newly constructed residential units may assign a tax credit transfer certificate for consideration of less than 85 percent subject to the submission of a plan to the Authority and the agency to use the proceeds derived from the assignment of tax credits to complete the residential project, which plan must demonstrate that the developer or co-applicant is receiving no less than 75 percent of the transfer credit amount before considering any discounting to present value; and

2. Notwithstanding the provisions at (b)1 above, a developer or co-applicant of a residential project consisting of newly constructed residential units that has received tax credits under the Federal Low-Income Housing Tax Credit Program, 26 U.S.C. § 42(b)(1)(B)(i) may assign a tax credit transfer certificate for consideration of no less than 65 percent of the transfer credit amount before discounting to present value subject to the submission of a plan to the Authority and the New Jersey Housing and Mortgage Finance Agency to use the proceeds derived from the assignment of tax credits to complete the residential project.

(c) The tax credit transfer certificate issued to a developer or co-applicant by the Director shall be subject to any limitations and conditions imposed on the application of State tax credits pursuant to sections 54 through 67 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-322 through 34:1B-335) and any other terms and conditions that the Director may prescribe including, but not limited to, any applicable statutes of limitations for claiming a refund or credit.

(d) A purchaser or assignee of a tax credit transfer certificate pursuant to this section shall not make any subsequent transfers, assignments, or sales of the tax credit transfer certificate. If a lender that holds a tax credit certificate as collateral on a redevelopment project forecloses on the project, the foreclosure and resulting transfer of the certificate shall not be considered a sale of the transfer certificate.

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

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

19:31-23.13 Assignment of rights of incentive award agreement

(a) A developer who has entered into an incentive award agreement pursuant to section 60 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-328) may, upon notice to and written consent of the Authority and State Treasurer, pledge, assign, transfer, or sell any or all of its right, title, and interest in, and to, the incentive award agreement and in the incentive awards payable under the incentive award agreement, and the right to receive the incentive awards, along with the rights and remedies provided to the developer under the incentive award agreement. To decide whether to consent, the Authority and State Treasurer will consider the purchase price and terms of the pledge, assignment, transfer or sale, the allocation of the purchase price to the tax credit, and the impact of the transaction to the reasonable and appropriate return on investment for the seller(s) and the purchaser. Any assignment shall be an absolute assignment for all purposes, including the Federal bankruptcy code. If the Authority approval included a co-applicant, prior to requesting the consent of the Authority and State Treasurer, the developer shall obtain, in writing, the co-applicant's consent, and the developer shall provide the co-applicant's written consent to the Authority and State Treasurer with the developer's notice.

(b) A co-applicant who has entered into an incentive award agreement pursuant to section 60 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-328) may, upon notice to and written consent of the Authority and State Treasurer, assign, transfer, or sell any or all of its right, title, and interest in, and to, the incentive award agreement and in the incentive awards payable under the incentive award agreement, and the right to receive the incentive awards, along with the rights and remedies provided to the co-applicant under the incentive award agreement, provided that the purchaser shall be a non-profit pursuant to Section 501(c)3 of the Internal Revenue Code. To decide whether to consent, the Authority and State Treasurer will consider the contributions of the co-applicant, the proposed contributions by the purchaser, the purchase price and terms of the assignment, transfer or sale, and the allocation of the purchase price to the tax credit. The new purchaser shall be the co-applicant and shall be required to receive an assignment of the co-applicant's participation agreement or to execute a new participation agreement with the developer. Any assignment shall be an absolute assignment for all purposes, including the Federal bankruptcy code. Prior to requesting the consent of the Authority and State Treasurer, the co-applicant shall obtain, in writing, the developer's consent, and the co-applicant shall provide the developer's written consent to the Authority and State Treasurer with the co-applicant's notice.

(c) Any pledge of an incentive award made by the developer shall be valid and binding from the time the pledge is made and filed in the records of the Authority. The incentive award pledged and thereafter received by the developer shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any pledge shall be valid and binding against all parties having claims of any kind, in tort, contract, or otherwise against the developer irrespective of whether the parties have notice thereof. As a condition of any incentive grant, the grantee, assignee, pledgee, or subsequent holder of the incentive grant shall immediately file notice of the same with the clerk of the county in which the project is located.

(d) The Authority shall publish, on its Internet website, the following information concerning each pledge, assignment, transfer, or sale approved by the Authority pursuant to this section:

1. The name of the person or entity offering the pledge, assignment, transfer, or sale of a right, title, or interest in an incentive grant agreement or tax credit agreement;
2. The name of the person or entity receiving the pledge, assignment, transfer, or sale of a right, title, or interest in the incentive grant agreement or tax credit agreement;
3. The value of the right, title, or interest in the incentive grant agreement or tax credit agreement; and
4. The consideration received by the person or entity offering the pledge, assignment, transfer, or sale of the right, title, or interest in the incentive grant agreement or tax credit agreement.

19:31-23.14 Affirmative action and prevailing wage

(a) The Authority's affirmative action requirements at P.L. 1979, c. 203 (N.J.S.A. 34:1B-5.4) and N.J.A.C. 19:30-3 shall apply to the redevelopment project, including, but not limited to, construction contracts for work performed before the application and after November 15, 2021 (the effective date of this subchapter), and included in the project cost. The affirmative action requirements shall apply for two years after the first certificate of compliance is issued.

(b) The Authority's prevailing wage requirements at P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1); and N.J.A.C. 19:30-3 and 19:31-23.3(a)8 shall apply to the redevelopment project, including, but not limited to, the following:

1. Construction contracts for work performed before the application and included in the project cost;
2. Construction contracts for work performed 24 months prior to the eligibility period pursuant to N.J.S.A. 34:1B-5.1(b); and
3. Construction contracts for work performed during the eligibility period.

(c) During the eligibility period, prevailing wage shall apply to building services at the site of the redevelopment project pursuant to N.J.A.C. 19:23.3(a)8.

19:31-23.15 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 52:14F-1 et seq.; and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

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

1. The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The Authority may consider new evidence or information that would demonstrate that the applicant meets all of the application criteria.

2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. After reviewing the report, the Chief Executive Officer of the Authority may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive

Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.

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

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

19:31-23.16 Reports on implementation of program

Beginning in 2022 and every two years thereafter, a State college or university established pursuant to Chapter 64 of Title 18A of the New Jersey Statutes shall, pursuant to an agreement executed between the State college or university and the Authority, prepare a report on the implementation of the program, and submit the report to the Authority, the Governor, and, pursuant to section 2 at P.L. 1991, c. 164 (N.J.S.A. 52:14-19.1), to the Legislature. Each biennial report required pursuant to this section shall include a description of each redevelopment project receiving a tax credit under the program, a detailed analysis of the consideration given in each project to the factors set forth in sections 58 and 59 at P.L. 2020, c. 156 (N.J.S.A. 34:1B-326 and 34:1B-327) and N.J.A.C. 19:31-23.6 and 23.7, in the case of a commercial project, the return on investment for incentive awards provided and the commercial project's impact on the State's economy, and any other metrics the State college or university determines are relevant based upon national best practices. The Authority shall prepare a written response to the report, which the Authority shall submit to the Governor and, pursuant to section 2 at P.L. 1991, c. 164 (N.J.S.A. 52:14-19.1), to the Legislature.

19:31-23.17 Severability

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

NEW JERSEY REGISTER

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